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THE TAXATION OF CHILD SUPPORT IN CANADA: A FEMINIST ANALYSIS

by

Audrey Joellen Shillabeer ©

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment
of the requirements for the degree of Master of Arts

Department of Political Science

Edmonton, Alberta

Fall, 1995

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled *The Taxation of Child Support in Canada: A Feminist Analysis* submitted by Audrey Joellen Shillabeer in partial fulfillment of the requirements for the degree of Master of Arts.

Dr. Linda Trimble

Judith A. Garber

Dr. Judith Garber

Dr. Annalise Acorn

July 14, 1995

For my daughter, Allyn.

University of Alberta

The Taxation of Child Support in Canada: A Feminist Analysis

Increasingly, Canada's tax system is perceived by many Canadians as unfair, and demands for tax reform abound. For instance, following divorce, child support payments are taxed in the hands of the recipients (overwhelmingly, women), and allowed as tax deductions for the payers (overwhelmingly, men). Together, this tax treatment is called the inclusion/deduction system of taxing alimony, and it is perceived by many women as unfair and discriminatory. Women have sought justice through the legislatures, the bureaucracies, and the courts. Since the inclusion/deduction system affects negatively many more women than it does men, a theoretical policy model firmly rooted in women's experiential reality is an essential prerequisite to tax reform. This thesis examines the issue, including recent court challenges, and concludes that the political, economic, and legal realms-- traditionally, the domains of men-- employ gendered analyses in tax matters. Such analyses have serious repercussions for women and children.

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Thanks must go beyond my earthly confines to my late mother-in-law, Jacquie Jevne, for enticing me to pull my head out of the smooth settled sands long enough to expose myself to the struggles of some women. Too, I am forever grateful to Dr. Susan Jackel for introducing me to feminist theory and for suggesting that I consider graduate studies, a move further encouraged by Dr. Judy Garber. Thanks to both of you. Thank you to Dr. Laurie Adkin for challenging my liberal feminist views; without that challenge, I may never have ventured beyond the boundaries of structures and institutions. Thanks to my university friends, especially Kathy Manson, Kevin Baker, and Vidya Kumar for adding such richness to my life as we transversed philosophical time and space together. My sincere appreciation and deepest thanks go to Dr. Linda Trimble for supervising my work and for being a friend.

Special thanks must be extended to my immediate family: to my partner, Ian, for trying to understand; to my children: Adam, Luke, and Allyn; to my mom, Eanswythe Shillabeer, and my brother, Robert, for always extending their love and encouragement without conditions; and to my best friends, Dave and Nancy Osborne for remaining true friends despite my radical changes.

Audrey Shillabeer

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THE TAXATION OF CHILD SUPPORT IN CANADA: A FEMINIST ANALYSIS

INTRODUCTION

"Not only must the system be fair, but it must be seen to be fair."[1]

These few words spoken about the tax system in Canada signify deeper concepts than their brevity would reveal at first glance. First, fundamental to the tax system are the concepts of fairness and equity which can be tied to deeper philosophical notions of equality and social justice. Second, and equally important, in these few words is the message that perception and interpretation are significant to any understanding of the tax system. In other words, the system must be accepted by its clients. Both of these concepts--fairness and perception-- play themselves out in this study of gender equality and tax policy.

Tax policy is not a policy field that springs quickly and easily to mind when one considers policy issues relating to gender equality; it is not readily identified as a "women's issue." More readily, when posed with the question as to what is a women's issue, men and women alike offer issues of reproductive rights, pay equity, or day care as examples. We should not be so constrained in our thoughts however. Sandra Harding, an academic and a feminist, states, as many feminists do (and I concur), that *every* issue is a feminist issue.[2] That every issue can be of concern to women becomes especially clear when one considers the reflexivity and subjectivity for which Harding argues, along with other feminist understandings such as perspective, relativity, and "otherness." All of these concepts, in addition to the concepts of fairness and perception mentioned in the first paragraph, figure predominately in my thesis about gender equality and tax policy.

Women, feminist or otherwise, are not key actors in the advocacy, formulation, or implementation of tax policies; rather, in the area of tax policy, women are policy takers or clients. That is not to say that women have not acted or continue to act in tax matters. Feminists have long argued that taxation policy--in general-- is unfair, in fact, discriminatory. Recourse to unjust policies has been sought through "conventional" political activity, specifically through the judicial system of Canada, and through "unconventional" political activity, specifically through the activities of grass roots organizations. The specific challenge to the taxation of child support/maintenance, perceived by women as discriminatory, has both elements--conventionality and unconventionality.

Paragraph 56(1)(b) of the *Income Tax Act*[3] dictates that child support payments pursuant to a court order are taxed in the hands of the recipient. Paragraph 56 (1)(b) has a counterpart, paragraph 60, [4] which allows the payer of child support to deduct such payments from his return. Together these clauses make up the inclusion/deduction system with regard to child support payments. Challenges to the inclusion/deduction system are explored herein by way of two case studies employing Section 15, the "Equality Clause" of the Charter of Rights and Freedoms. In the first case, Mme. Suzanne Thibaudeau of Trois Rivieres, Quebec, filed three income tax returns for the year 1989: one for herself which included her earned income, and one for each of her children which included child support payments made by their father but managed by their mother. Mme. Thibaudeau, who believes the taxation of child support to be discriminatory against custodial parents--specifically women, since ninety-eight percent of custodial parents affected are women--filed her returns as she did knowing full well that this practice was disallowed in Canadian tax law. As she expected, Revenue Canada took issue with her returns, and subsequently, her case was heard in the Tax Court of Canada in 1992. There Thibaudeau lost her case, but she appealed the decision to the next court, the Federal Court of Canada, Appeals Division. Following that hearing, a decision came down on May 3, 1994 wherein the earlier decision was overturned and the specific tax law was named unconstitutional. Thibaudeau was elated, as were thousands of other women across Canada who had been adversely affected by the taxation of child support. Next, the federal government appealed the case, this time to the highest court in the land, the Supreme Court of Canada. The case was heard in October of 1994, and a decision is expected in May of 1995. (Since this thesis was completed just prior to the

Supreme Court's ruling, an afterword will be appended with regard to the outcome.) Meanwhile in mid-1993, the Tax Court of Canada, this time in British Columbia, did not accept a second contest regarding the taxation of child support brought to the court by another woman, Ms. Brenda Schaff. Both women challenged the tax law citing Section 15 of the Charter of Rights and Freedoms. Their cases, and discussions of the arguments for and against them, constitute the framework around which this study revolves.

In the quest for fairness and justice, and in order to fully understand my argument, the Thibaudeau and Schaff cases must be considered within the larger societal Canadian context. Acknowledgement of our patriarchal society and our capitalist economic system is essential to my argument. The inclusion/deduction system of taxing child support, largely in the hands of women, must be presented along side, and compared to, other tax preferences received by men and business in order that the extent of the inequity for women and children is brought to light. For example, the priorities of our predominantly male policy makers ought to be questioned when the taxing of child support in the hands of the recipient (usually a mother with custody of her children--often in poverty) is placed next to the policy of allowing deductions for escort services, box seats at sporting events, and business lunches (deemed necessary for hypothetical business transactions) claimed, generally, by men. What is named an income tax deduction is within the political realm, and reform depends upon political will.

In the first chapter of this thesis, I will: present the ideologies and policy models enjoying currency in Canada, and indeed, in much of the western world; discuss the concept of success and failure insofar as it relates to policy; make arguments for the validation of feminist epistemology; and present a case for feminist methodology. Employing a short discussion of democracy, equality, and discrimination, I will present a rationale for the feminist consideration of equality in the case of tax policy. In chapter two, I will examine the process and outcome of policy development regarding the issue of taxation. Therein I will look at the concept of "income," a concept with which we probably now feel comfortable, but after revisiting, we will find unsettling and fraught with enough ambiguities that we ought not be so sure of the concept. Then we will understand the political ramifications of that which is named "income." In chapter three, I will: identify and analyse the factors including feminist actions which propelled and continue to propel this issue onto the political agenda; assess the likelihood of "success" in the matter of reform and implementation; and identify the salient variables, that is to say, which elements of the political system have influenced policy development in this case, which have not, and why. Finally, in chapter four, I will draw conclusions about gender equality policy and Canadian tax policy. I will complete a feminist analysis with experiential and theoretical underpinnings that I hope will contribute to ongoing analysis by feminists. In my conclusion, I will offer prescriptive comments for consideration and discussion.

This thesis is a compilation of concepts, first explored in courses on public policy and gender equality. It is largely a research thesis, preliminary and descriptive in nature, and is intended to be used as a building block upon which a case can be made for gender equality in upcoming tax policy reform. Because of the thematic requisites of the original assignment, many aspects of equality and tax policy are mentioned but indicated for further consideration. Therefore, this work may be ultimately markedly short on prescriptive ideas in the same way that a topic "opener" is short of the mark when juxtaposed with the final, larger analysis and evaluation necessary to responsibly prescribe. This is not meant to be definitive or the final word on the subject, rather only my account and understanding.

Herein, normative values abound and must be established at the outset: I am a feminist academic who, firstly, is interested in feminist concerns and public policy, and secondarily, is *mildly* motivated by (but nonetheless interested in) my personal stake in the tax problem and the tax cases about which I write. "Feminism does not begin with the premise that it is unpremised. It does not aspire to persuade an unpremised audience because there is no such audience. Its project is to uncover and claim as valid the experience of women, the major content of which is the devalidation of women's experience."[5] I have named my biases and I have announced my project.

CHAPTER ONE

PERSPECTIVES AND FEMINIST THEORY

When discussing gender equality and Canadian tax policy, it would be difficult and irresponsible to do so without first discussing some very large and general concepts. After all, part of the feminist project must include moving beyond simplified understandings of policy. First what are "politics?" What politics are eventually translated into policies? Who decides policy? How are policies evaluated? What policies are successful and for whom are they successful? What is equality and what constitutes discrimination? Who is left out of policy-making either as actors or as clients?

Let me begin with a quotation from Claus Offe, who in his article entitled "Challenging the Boundaries of Institutional Politics: Social Movements since the 1960s," states that

> . . . it is possible to specify which substantive concerns are politicized at any given moment in a particular society. If everything can be the object of political transaction at some point, not everything can be political at the same time. In a given polity there is always a relatively stable evaluative framework according to which interests are recognized as such. There is, furthermore, a "hegemonic" configuration of issues that seem to deserve priority and in respect to which political success or progress is primarily measured, while others are marginal or "outside" of politics.[6]

From this quotation, I would like to borrow certain phrases and concepts and expound upon them throughout my thesis on tax policy. To draw them to your attention, they include "politics," "hegemony," "evaluative frameworks," "success," and "marginalization." I will use Offe's quotation as a framework for my analysis in this chapter.

Politics and Policy Paradoxes:

While it seems that the word "politics" would elicit a common understanding, it, in fact, is not always easily defined. In the first political science book that I encountered in university, I was told what politics was to mean to me:

> To study politics is first and foremost to study conflict. Political systems are systems of conflict management for dividing up the spoils of public life among competing individuals, groups, and interests. In the words made famous by Harold Lasswell, the study of politics is the study of who gets what, when, where, and how. . . . Democratic political systems in particular are characterized by their capacity to manage conflict without recourse to violence. In the words of essayist H.L. Mencken,"voting is simply a way of determining which side is stronger without putting it to the test of fighting."[7]

As my studies progressed, I was able to understand politics in a different way: politics are messy and that is okay, and politics are "the art of the possible"[8] limited only by our imaginations. We as a society can manipulate our politics if we strive to understand them and choose to participate responsibly in them. Politics are best understood not as a science, but rather, a way of life. For me, conflict in politics has been replaced by the notion that we could find solidarity when politics got messy or bogged down in policy paradoxes. Deborah A. Stone, in her book, *Policy Paradoxes and Political Reason*, describes a policy paradox as follows.

> Paradoxes are nothing but trouble. They violate the most elementary principle of logic: Something cannot be two things at once. Two contradictory explanations cannot both be true. A paradox is just such an impossible situation, and political life is full of them.[9]

To be sure, political life without policy paradoxes is an unrealistic reflection of society. That there are policy paradoxes indicates that different perspectives and interests are represented in political life. The issue of the taxation of child support is one such policy paradox.

Policy paradoxes come as a result of competing ideological forces vying for the moral high ground between political and civil society. The resolution of policy paradoxes depends on the social production of meaning with regards to goals, problems, and solutions. During this social production, relationships are formed between the civil and political aspects of society. Ideas and institutions interact.

Hegemony and the Social Production of Meaning:

We will wade into the mire of Canadian tax policy to discover if women have been marginalized in process or policy outcomes. But first let us look at some very large contextual waves sure to wash over the topic. Canadian ideological forces include originally and primarily conservatives, liberals, and secondarily, neo-conservatives, and neo-liberals. As a strong thread, Canadians have also a collectivist ideology which manifests usually in social democracy, red toryism, or social welfare liberalism. Although these terms have over the course of only one hundred years become very convoluted and it would take another thesis of this length to discuss what I mean by them, I justify their use (despite my unease with them) thus: when we discuss them in the context of Canada, these terms elicit a common response of recognition and understanding. They facilitate easy discussion. Furthermore, that they are so commonly understood plays into my argument, so I will proceed without definition.

The good governance of any country depends upon the resolution of policy paradoxes, yet quintessential to a paradox is its inconsistent and often contradictory nature--not a base upon which resolution can be easily built. The resolution of policy paradoxes, therefore, can only be discussed as the social production of the meaning of goals, problems, and solutions--a social production to give the appearance of resolution. Subsequently, the forces of conservatism and liberalism in either their "pure" or mutated forms vie for the right to produce meaning.

During social production, ideas and institutions interact. Institutions, it has been argued, provide the over-arching framework of political life, the cement which glues members of the polity, the "constant" by which fluid ideas and policy options are assessed and chosen. I will not assign such immutability and fixedness to Canadian institutions, rather I will argue that institutions, like ideas (but somewhat less so), are malleable, and as such socially constructed. So we have it: at the centre of both institutions and ideas sits social production, or politics. Political discourse (socially produced) defines the rules of the game (methods and methodologies), delimits the boundaries of the playing field (what is political), and the moves and objectives of the game (what conflicts are resolvable). Political discourse, via social production of meaning of goals, problems, and solutions, attempts to "resolve" policy paradoxes. Whichever ideological force is more adept politically becomes the more dominant and earns the position of defining and "resolving." But "resolution" is only fleeting. Whoever dominates in the social production of goals, problems and solutions "wins" the political game-- but only until the title is challenged again. My problem is: commonly understood political paradigms of Canada (conservatism and liberalism) used historically and contemporarily suffice no longer to "resolve" policy paradoxes even when "resolutions" can be socially constructed. For instance, commonly understood political paradigms do little to address the experiential concerns of women. If policy paradoxes can no longer be resolved even through the social production of meaning, then we have to look at the problem of liberal democracies themselves. If this is unclear at the moment, it should be very clear by the end of my thesis.

To begin then, we need to look briefly at the concept of legitimacy since the governability of any polity rests on legitimacy. Another introductory text for political science explains that

> [f]or a governmental system to persist, it must acquire *legitimacy* . The members of the society must accept the system not merely because they have to, but also because there is some agreement that it is good, or at least adequate.[10]

Antonio Gramsci uses the word "hegemony" for a similar concept. Hegemony relates to:

> [t]he "spontaneous" consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group; this consent is "historically" caused by the prestige (and consequent confidence) which the dominant group enjoys because of its position and function in the world of production.[11]

Gramsci's hegemony has been explained further by Heather Jon Maroney:

> . . . the ideological apparatuses of the state can be mobilized to instill progressive as well as conservative ideologies in the population at large. . . . [S]truggles for power necessarily involve not only a contest for the control of the repressive apparatus of the state but also struggle for (ideological) hegemony on the terrain of civil society.[12]

As Maroney astutely points out, ideology, politically constructed and managed, provides fuel for hegemonic or dominant forces. That goals, problems, and solutions are constructed has far-reaching implications for our ability to evaluate the state[13] and state policy; our evaluations are themselves rooted in a constructed consciousness. Our mental faculties for critical analysis of the dominant ideologies become skewed. Through extension of this surrealism, the ideologies of conservatism and liberalism and the curious hybrids of neo-conservatism and neo-liberalism become even more convoluted when evaluative judgements are made. Gramsci's original words and Maroney's interpretation show us that promotion and coercion are synonymous with the social production of meaning of goals, problems and solutions. Political power and legitimacy are the spoils of successful capture of hegemony.

Hegemony is merely a generic political term; that is to say, it is not limited to the European context in which Gramsci coined it. Which ideologies are relevant is society-specific. Whichever ideology enjoys paramountcy provides the political discourse and social production of meaning; but hegemony is constantly renegotiated therefore "always fragile."[14] The ideologies of conservatism and liberalism promoted by the Canadian hegemonic forces are rooted well in the Canadian experience, and the hybrids of each have arisen from further experience and social production. The power behind hegemony does not come as a "lump-of-power"[15] (one has it or does not have it) but it exerts itself in ever-changing degrees. In the Canadian context, both ideologies and their off-shoots enjoy currency.

Given the common understanding of the two basic ideologies with a strand of collectivism in Canada, commonly understood policy making models have swung from the "glory days" classical models preferred by conservatives to the "progressive politics" models preferred by the liberals, and beyond to the compromises of the social democratic forces rising around the turn of the century, and to the mutant neo-conservative and neo-liberal models of the 1980s and into the early nineties. Today, Canadians under the squeeze of declining resources are likely to experience different models yet again which will demonstrate the adaptability of ideas and institutions and support the notion that politics and structures run parallel to one another.

The socially produced model in which past policy making practices are glorified is now commonly understood by those who support such practices as consensual, co-operative, and controlled. This in the abstract appeals to many Canadians as good governance. Such attributes are highly prized by conservatives. Certainly, conservatives would rather have the politics of the good old days than the new politics which forced the "disruption" of the conservative order. New politics are seen by conservatives as conflictual, pluralist, and therefore, fragmented. On the other hand, liberal proponents of "new politics" see conservative models as closed, patronage-laden, exclusionary, unrepresentative, and therefore, undemocratic. Both camps claim to "know" the one way, the "right" way, to make policy, and both camps evaluate the products of the state (policy) differently. Evaluation, it must be clear, is based in normative judgements, and subject position is all important. Complicating matters is the fact that evaluative judgements along liberal and conservative ideological lines are based in a consciousness of socially produced meanings. Let me explain.

Under hegemonic discourse, grand ideology transforms into more simple symbolic responses. I am reminded of astronomy's black holes, first, because black holes "suck in" objects; second, because of the processes of compressing, condensing and concentrating that occur within blackholes; and third, because of the all consuming imprisonment of captured objects thereafter. Ideological black holes draw in citizens and fill them with ideological "bafflegab"-- drawn from, but no longer much resembling, larger philosophical theories. Once citizens are past the point of no return, their thinking is imprisoned by the unidimensional ideology to the degree that they spout programmed and habitual responses. Such habitual responses and programmed arguments are evidenced not only by blind collusion with the ideology but perpetuation of its coercive activities. For example, there is not an Albertan past the age of twenty-five who does not recognize the term "N.E.P." Despite the few I have canvassed being unable to identify the key components of the National Energy Policy of 1980, they do understand the symbolic emotive responses that are to be given at the mention of the three letters. This response no longer corresponds with the policy but rather with the fears (socially produced) of too much government intervention and some perceived unfairness associated with that, so much so that the symbolic significance of the N.E.P. is related only to fear and anger without any conscious understanding of the etiology of the emotions. Hegemonic discourse occurs everywhere: in the home, in the workplace, in the media, and in state discussions. Those who collude with the hegemony often become disciples of the gospel. H. J. Maroney was credited earlier in this piece for saying that socially produced political discourse has far-reaching implications for our evaluation of the state, and I agree. All ideological camps use hegemonic discourse in a fight for enough legitimacy to govern, and in the imprisoned minds of citizens there are very limited choices.

Given the democratic nature of Canada, the electoral system acts as an interim score keeper for the polity. This thesis does not argue for paramountcy of electoral politics in the resolution of policy paradoxes, in fact, it is my belief that political power is quickly moving beyond sovereign democratic institutions to rest in world economic orders. To date, however, electoral politics have acted as intermittent monitors of the efficacy of the hegemony. Among both the voting and non-voting public, collusion and perpetuation are necessary to support hegemony. Necessary, too, is the effective management of any existing counter-hegemonic forces as well as the prevention of any development of new counter-hegemonic forces. Counter-hegemonic forces are challenges to the dominant ideology(ies). If diligent management is not the case, windows of opportunity allow for capture by organized counter-hegemonic forces. During the unrest of the 1960s, new social movements seeking a voice and representation rejected the closed and elitist politicians of the good old days who subsequently lost their legitimacy to govern. After a time of pluralist politics coupled with the socially produced notion of a country in economic crisis, legitimacy is again in crisis. Yet pluralist politicians have introduced so many factors to the political process that the complexity of policy-making has expanded tremendously. Now Canada has arrived, as have other first world countries, at a legitimacy crisis relating to governability: we have arrived at the crossroads in our politics, a place where neither the "good old days model" or the "new politics" model (nor the pendulum actions between the two) suffices. Politics are getting messier, and in this paradigm shift, feminists must be posed to compete for legitimacy or we will be relegated to continued marginalization stemming from the old paradigm.

In most schools of political science, policy paradoxes are not the usual way of examining public policy. Deborah Stone, in her book *Policy Paradox and Political Reason*, makes a post-modern critique of the usual calculated methods and rational methodologies of political science and argues instead for the consideration of perspective and irrational interpretation along a "political struggle model," yet a model not incompatible with Gramsci's concept of hegemony. At the outset of her book, Stone persuades the reader of the reality of policy paradoxes by offering examples wherein policy is indeed seen as two contradictory evaluations at one and the same time. By this, Stone shows that it is less the political science model that helps to explain and ultimately to predict policy as it is the construction of hegemony through messy politics.

Stone divides her subject matter, the Americans, into two world views of political reason: her divisions are based first, along the world view represented by Robert Nozick, and second, along the world view represented by John Rawls. Nozick's perspective would lead us to a social conservatism and the market model and Rawl's perspective would lead us to social liberalism and politics.

> Conservatism includes beliefs in distributive justice as fair acquisitions, liberty as freedom to dispose of one's property, property as an individual creation, and work as motivated by financial need. Liberalism includes beliefs in distributive justice as fair shares of basic resources, liberty as freedom from dire necessity, property as a social creation, and productivity as stimulated by security.[16]

Sleeping next to the American giant as we do, Canadians have similar political experiences, with one notable difference: social democracy as a legitimate hegemonic force in our collective consciousness. This difference noted, Stone's comments are easily transposed to the Canadian experience. Stone says that the social production of meaning of equity, efficiency, security and liberty are the goals in current discourse and I would argue that, in both countries, this is especially so for efficiency. But the goals, she says, might have been otherwise, perhaps autonomy, participation, representation, and democracy.[17] As Stone points out, everyone believes in these values in the abstract as "motherhood" issues; however, once politicians start to interpret and define, the paradoxes begin. What is equitable for the liberal is at the same time something else for the conservative. What is liberty for the conservative is at the same time something else for the liberal. Stone elaborates and supports her arguments well. Let me attempt to use the aforementioned concepts in the general case of tax policy and in the specific case of the inclusion/deductability clauses of the *Income Tax Act*.

To begin, what do ideology, hegemony, legitimacy, and the Canadian experience have to do with tax policy and specifically with the taxation of child support? The tax question, and the federal government's treatment of it, illustrates many of the elements of past Canadian experience now "stuck" in a policy paradox. The taxation of child support is gaining attention across the country because of the demand by Canadian women for social justice in taxation matters, and politicians and policy makers are mistakenly using old socially produced paradigms to manage the expectation.

As Charles Lindblom states in his article, "The Market as Prison," "[m]an cannot think without classifying."[18] Psychologists and sociologists will tell you that classifying is how we make sense of the world-- we cannot view everything with a fresh interpretation each encounter we have, therefore, we "stereotype." Given our value systems and cultural baggage, our need to know and our proclivity to stereotype result in a chance to judge. Just as stereotyping has its necessary and positive elements, it also has its negative and prejudicial aspects. Perhaps we cannot help but attempt to make a general theory of the policy process, but we must be cognitive of inherent problems of generalizing typologies. For instance, institutions are set up to service the models, and the institutions in turn produce ideas and models in a chicken and egg fashion. Typologies, by the fact that they are generalizations, tend to reinforce the status quo, perpetuating the hegemonic discourse. Understanding stereotyping and typologies, a critical analyst can evaluate and judge revealing the inconsistencies, the inadequacies, and the injustices of a policy model.

Our journey into a feminist analysis of the taxation of child support begins with an understanding that public policy can be assessed using a variety of policy models which are underpinned by normative beliefs and interpretations. Descriptive and prescriptive models and standards for success serve many purposes for many different actors. Since public policy dictates many aspects of our everyday life, we should carefully study all the models, analytical approaches, and normative theories in order to gather tools for critical analysis. Justifications and realities must be studied with a critical eye for their normative content since realities are socially constructed. Certain patterns revealed in policy models can be instructive for strategic purposes. From them, we can imagine "better realities", and strategize towards these outcomes, albeit they would also be conceptualized according to our own normative desires and expectations.

A model codifies and therein legitimizes "subjective truths." It becomes the interest of policy makers including bureaucrats, academics including political scientists and economists, the media, interest groups, and a host of others to establish and maintain their interpretations as "truth." Given the nature of the democratic polity wherein citizens judge and elect politicians on the basis of their perceived successes or failures, the articulation of positive and negative interpretations of policy becomes integral to the Canadian political system. Credit-claiming by policy makers will help to justify political and bureaucratic positions, and following that, their budgets. At the same time, given the "protective" nature of institutions, blame-laying is predicted as policy makers attempt to "pass the buck" for policy which is negatively perceived. Responsible citizenship demands an honest attempt to understand the issues and assess with all of the critical tools available to judge where credit and blame really lie.

The policy process is only one cog in the larger Canadian political system and to understand the Canadian political system necessarily means examining policy processes as they are theorized and modeled. Just as the model and standards can be normatively evaluated and judged, so too can the constraints and influences on the policy process. After all, what one policy maker sees as a constraint will not be seen as a constraint by another policy maker (or polity) who has the political will to overcome constraints in order to formulate and implement specific policy. Furthermore, constraints and influences can be constructed following the hegemonic discourse.

As Offe suggests, hegemonic forces within societies prioritize issues and evaluate policies according to those priorities. In much the same way that a pendulum swings, priorities have shifted in Canada and have shifted back again --suggesting perhaps a natural balance and a self-regulation in collective ideals. Indeed, a polity cannot be held to a particular policy preference over time and circumstance. Understanding that success and failure are subjective and tied to the hegemonic configuration of values and issues could help to predict the policy objectives, policy-making process, and likelihood of implementation of policies. In addition to the notion that perspectives are subjective, one then has to take into account the context including temporal, ideological, political and economic factors.

Tax policy, like any public policy, is examined and evaluated using many different "evaluative frameworks" ranging from simple to comprehensive in understanding, conservative to progressive or conflictual to consensual in nature, patriarchal to humanist in inclusiveness, social to economic in perspective (with much in between). Depending on one's understandings of the complexity of explanations behind policy, a simple or comprehensive framework will be employed; in this case, the one making the other exclusive. Many choose a simple framework, many others simply have not grown beyond it.

Second, one's basic assumptions about human nature will underpin any analysis and reveal itself in liberal or conservative premises which might manifest in either benevolence or meanspiritedness. Further, to predict the degree of expected inclusiveness, one might look for arguments and justifications stemming from sociobiology or from divinity (or from any imaginable source). One's philosophical beliefs as to whether "man is basically good, or man is basically evil" (revealed in liberal or conservative understandings), and about "nature versus nurture" are, in their black and white strains, mutually exclusive. In the greyness of experiential reality, however, such philosophical stands are made either way at different times by the same person. (For instance, some of those who argue against abortion using a sanctity of life argument may not see the contradiction when they argue for capital punishment using retribution arguments.)

Finally, perspectives are unlimited and by way of common example may include social, economic, and/or political biases. Given the showing of the Natural Law Party in our most recent federal election, a spiritual perspective has now been applied publicly to policy. Depending on the complexity of the framework, several perspectives may be married, for instance, a religious perspective on abortion policy may be supported by an economic argument for the delisting of abortions from the schedule of medical benefits.

After all the models of analysis have been determined, context becomes important as well. One's cultural and familial experience will further affect the inquirer's analysis. Extrapolated across a collectivity, perspectives can rise in prominance via the hegemonic forces, and after some time, these perspectives are seen as "common sense".

What is important here is that the determining factor for which approach might be employed depends on the inquirer's normative values. Furthermore, the approaches behind the formulation and evaluation of public policy are never set in stone; the politics driving them are multitudinous and only bound by limits on creativity. Change in some respects is at the same time resisted and expected. At the outset in any analysis of public policy, the approaches ought to be determined since they are so central to the direction from where policy has come and to where policy moves. Despite their function of legitimizing political and policy activities, such models, analytical approaches, and normative theories serve as the ideal of a normative understanding of the policy process, and through the reverse of that, such benchmarks offer tools for critical analysis. It is my opinion that any analysis should not show total disregard for other possible understandings; resultant policy would be incomplete, undemocratic, and sadly, unfair.

To reiterate and to summarize, Charles Lindblom said " [m]an cannot think without classifying." That different policy fields will often follow different policy models is less important than an understanding that any model ought to be critiqued. Public policy, as a significant product of the state, has profound effects on the polity; as such, whatever the policy model, it deserves careful, on-going, and full examination. An understanding of the policy model and its standards will alert the critical analyst to the true constraints and influences on the policy process. From that, one can determine who has been left out or marginalized.

The market model of policy making is evident in the cost-benefit analysis underpinning the taxation of child support. The market model of policy making presupposes a market model of society. Stone explains what this society looks like:

> Society is viewed as a collection of autonomous, rational decision makers who have no community life. Their interactions consist entirely of trading with one another to maximize their self-interest through rational calculation.[19]

In these market models, quantitative measurements are used for qualitative experiences with the expected results similar to "comparing apples and oranges."

Today, with the dissipation of ideological camps following years of brokerage politics, conservative values are paradoxically mixed with progressive values. Under the federal Liberals enjoying hegemony, the goal of fairness in taxation (originally socially produced by the Liberals and seized by a citizenry with high expectations and a "rights" discourse) is coupled with the realization for them that only the poorest of the poor within society will benefit from reform in this area. Satisfaction for a small group of poor women marginalized on all counts does not conform to the notion of political vote-gaining from broadly based policies. In electoral politics, appealing to marginalized groups is counter-productive. Therefore, if re-election positioning is important, motivation to resolve this policy paradox may be low. Social justice loses to the status quo. But Canadian politicians and bureaucrats should not underestimate the support of women beyond those directly affected by this policy. Nevertheless, competing neo-conservative and neo-liberal values more recently manifested in the Canadian public (exacerbated by a political discourse of a declining Canadian economy in crisis) confound the best of liberal intentions by demanding "fiscal responsibility."

The problem originally vocalized by single mothers, their cause sympathetically endorsed by journalists, properly sanctioned by an appeals court judge, and now socially managed in the Canadian polity, is at least two-fold: first, the taxation system needs reform in order to maintain the perception of fairness, and second, in a time of a declining tax base owing to a history of tax incentives, preferences and tax holidays, fairness may be deemed too expensive in a cost-benefit analysis given the deficit and debt "crisis" perceived by Canadians. What naturally arises from this dilemma is a commitment to efficiency wherein the "biggest bang for the buck" is the focus. Budgets decide social justice: quantity over quality. Paradoxically, a liberal rights discourse is complicated by a call for greater conservatism.

The old paradigms of glory days and the hyperpluralist years have resulted in a policy crisis in North America. If we accept as most political analysts suggest that there are only two strains of ideology--conservativism or liberalism, the right or the left--in the North American experience, we are limited by our imprisoned thinking. Many political analysts fall into the trap of discussing policy paradoxes and policy options as though they were limited, binary, exclusionary, and absolute. In reality, there are blends of the two ideologies with a great deal of superfluous and inconsistent emotive understandings thrown in as well. Furthermore, there are streams of political thought flourishing which have no connection to the left/right continuum as we know it; for a most interesting example read Donna Haraway's work about cyborgs.[20] Conservative and liberal ideologies are too constrained by lost theory and long-forgotten history to be of much benefit any longer. We know that the conservative and liberal ideologies perpetuate the same paradoxes pertaining to goals, problems and solutions. In the United

States, these two world views are causing policy making to grind to a halt. Is Canada soon to follow?

There cannot be a return to the good old days politics by virtue of the fact that the hegemonic discourse of liberal democratic pluralism has armed political and civil society with the language of rights and entitlements based in "justice." A wider variety of policy goals are being pursued. "Inclusion" is here to stay as democratic involvement is demanded at the level of the masses. The complexity of political and civil society in Canada has increased.

Two other factors have been hinted at previously and need to be at least mentioned at this time. Power arising from hegemony has formerly rested in whomever governs the polity. Lately however, we have seen a shift in this paradigm--from political power to economic power. Where once there was merely a congruence of ideas between the government and the business community, more and more we see international money stealing power for itself beyond the confines of national boundaries and the constraints of government structures and policies. On the other hand, we are seeing a rise in populist parties with their grassroots notions of the appropriate source of the "true" legitimacy of governance. Interestingly, both seek similar policy options at times. I would attribute this congruence to hegemony and the social production of meaning finding willing colluders, but more study is needed to conclude this definitively. Could it be that a historically rooted liberal democratic political culture has mutated since the genesis of the "democratic" movements of the 1960s to a place in the 1990s where hegemonic power now rests in the boardrooms of multinational corporations unconcerned with nation-state boundaries and supported, through blind collusion, by great masses of civil society who by their rugged individualism and their distaste for governments will no longer serve any political elite? The "fragile" hegemonic forces of the past have not only lost their position of play but may not even be in the game any longer.

Through what manner of language is the social production of meaning occurring? Its easiest-to-detect practices include fabricated "buzzwords" (such as the N.E.P. example earlier) and "motherhood" concepts. Support for motherhood issues is commonly understood, yet upon definition, the support may vanish. For instance, justice in the legal system is a motherhood issue but when defined, justice may hold very differing understandings, from "victim-offender reconcilition" to capital punishment.

Efficiency is a "motherhood" goal to which citizens subscribe in the abstract form: who would dispute that efficiency is good? But in deeper analysis, efficiency contemporarily lends itself to a cost-benefit analysis that places absurd economic value on matters unquantifiable– such as the quality of life for single mothers and poor children (if their welfare were included in a cost-benefit analysis at all).

"Motherhood" values pepper the news of this taxation issue: "those who really need help," "for the sake of the children," "quality of life," and "family values" are juxtaposed against discrediting words such as "special interests", "reverse discrimination," "biased," and most recently, such meanspirited buzzwords as "vindictive leech moms."[21] It is clear that matters of communication and interpretation (by the politicians at the national level and at the provincial level, interest groups and the media) are at the forefront of this political struggle. During upcoming tax reform, the dominant forces behind the hegemonic discourse will have to socially reconstruct the meaning of the goals, problems, and solutions while maintaining legitimacy enough to govern. How all of the actors resolve this policy paradox remains to be seen.

In the end the socially produced solution for the people of Canada will be a curious blend of limited policy (neo-conservative influence) targetting a broader base (liberal influence): likely the question of the taxation of child support will be settled, at least symbolically, in favour of the women, with the tax preferences or deductions no longer available to, or greatly reduced for, the men. Then tax dollars are not lost and policy does not detract from the attempt to maintain at least as broad a base as has existed throughout the liberal years.

Evaluative Frameworks: The Measure of Success

On the heels of the idea of social construction of meaning, it follows then that whatever ideology or understanding is accepted by the polity, an evaluative framework is necessary to assess the success and failure of the policy. It is necessary to understand the concepts of success and failure in order to answer the following questions:

1. Is the current tax policy successful policy?
    Is it successful in doing what it was intended to do?
    For whom is the policy considered successful? (Whose interests does it serve?)

2. Even though an original objective of the policy may have been met (making the policy successful for those who designed it), does the success of the policy continue over time, given changing goals and objectives?

3. If policy is successful in one society and the policy is transplanted to another society, is the success accorded to the policy necessarily transplanted? If tax policy is named successful in the United States, and Canada adopts the same policy, is it ipso facto successful in Canada?

4. In their attempts to effect change in policy fields, when are feminists successful, partially successful, or failed in their activities?

The Funk and Wagnalls Canadian College Dictionary defines a *success* as "a favorable or desired outcome of something attempted;" a *failure* as "a turning out to be unsuccessful, disappointing or lacking." I concede that a definition is expected to be succinct, but it is interesting to note that both definitions suggest *more* . Suggested in both definitions is a normative evaluation-- in the first definition by the term "desirable," and in the second definition by the term "disappointing." Furthermore, in the first definition (that of success), there is reference to another actor, one who has attempted something. It is important to note, that according to the definition, success might-- *but does not necessarily* -- rest upon whether the outcome is desirable or disappointing *to the actor who has attempted something* . Both definitions--that of success and that of failure --beg the questions: success or failure from whose perspective?

So, rising out of Offe's statements presented earlier, another question is to be asked: in what time and in what society is the policy judged a success or a failure? Offe raises questions regarding both temporal and societal (or cultural) interpretations. Further, he comments that an evaluative framework stems from the politicized concerns of the time. To reiterate then, my basic premises are that without consideration of the actors who interpret a particular policy and without the context of the policy, there can be no consideration of the success or failure of policy.

The condition of perspective has been determined from the definitions of the words "success" and "failure." Desirability and disappointment regarding a policy can be held by different actors at the same time. As the definition suggests, an actor may be involved in the process of attempting an outcome (an active actor) or on the outside of the process (a passive actor). Pertaining to public policy, this may be better conceived as, on the one hand, the active policy maker/evaluator, or on the other hand, any passive evaluator, for example, the recipient of policy; the one who is directed to pay for policy; or an evaluator with no vested interest beyond a casual or an academic interest in the policy. The subject position of the evaluator, active or passive, may be blurred. For example, it is conceivable that an actor could at the same time be the policy maker, the recipient of the policy, and an actor who is directed to pay for the policy. It is conceivable then too that the actor may have different evaluative perspectives given the subject position from which he or she speaks. This is especially so for many women who find themselves in role conflicts.

Nevertheless, more fundamental (but not necessarily more important) than subject position in the evaluative process are one's values and beliefs. Given many other considerations including the aforementioned interests pertaining to subject position, values are ofttimes at the centre as determinants of policy and the evalution of policy.

Values and beliefs about human nature will affect the evaluator's interpretation of policy. For example, if one believes that humans are essentially good, one is less likely to see intervention in the policy field as a success. However, if one considers human nature as both good and evil, one may react more positively toward interventionist policies (unless of course the government is perceived as evil, then interventionist politics would not be accepted). Although politics often only relate to the mediation of *interests, values* sometimes must be mediated. Sometimes citizens differ in interests but agree on values; sometimes, citizens agree on interests, and disagree on values.[22] "A conflict over values creates a more complex situation."[23] If only interests were involved, an institutional evaluative framework may work well enough, but more thought is needed before I would argue this.

To put the matter of subjective perspective in context, recognize that individuals belong to societies. Despite Canadian society (being a liberal democratic society) placing a high priority on the individual (compared to many other societies), Canadian society must also be viewed as a collectivity. As Don Carmichael, Tom Pocklington and Greg Pyrcz suggest in their book about democracy and rights, "every society has standards, both of adequacy and of excellence."[24] To return to my first quote of Claus

Offe, as I said I would:

> [i]n a given polity there is always a relatively stable *evaluative framework according to which interests are recognized as [political]* . There is . . . a "hegemonic" configuration of issues that seem to deserve priority and *in respect to which political success or progress is primarily measured* . . . ."[25] (italics mine)

Therefore, some collective understanding of the measure of success and failure is possible. So what might the Canadian collective understanding of success be? Let me first deal with values, then interests.

Democracy, in its pure form, reflects government for the people by the people. However, given the size and complexity of modern societies, unanimous opinion is impossible. With the problem for democracy in large and complex societies like Canada in mind, can we assume some degree of consensus regarding Canadian values? Canadian society is not a monolithic bloc in its assessment of values. Since unanimity is the ideal democratic form of decision making, and unanimity is impossible in Canada, some citizens have argued instead that the test of success should rest in the greater number of people who believe that a policy is good. This would amount to the adding up of the opinions of individuals to determine the collective good (and thus satisfy the *liberal* part of our *liberal* democracy). Yet I would argue that good policy is not necessarily that to which the most people agree, since that would reduce policy to that which satisfies the lowest common denominator.

So the *societal* values and standards in Canada have been divided following this longtime debate for either the strictly majoritarian view or the view of majority rule with a serious consideration of the minority. Carmichael, Pocklington, and Pyrcz cite eminent American democratic theorist, Charles Hyneman, as saying:

> The ideal in democratic government is obligatory response to the wishes of the people. Popular government, popular control of government, government by the people are short terms for instrumentalities and practices designed to achieve this goal. We can estimate the closeness of approach to this ideal by finding answers to these three questions: a) how much the population shares, b) in how much of the critical decision making, c) with how much impact or influence.[26]

These criteria can be applied to both the majority and the minority-- following either argument.

While policies can be evaluated by the extent to which they demonstrate democratic rights, other rights can be considered as well: for example, morality rights including human rights. Not wanting to risk straying too far off topic by discussing moral rights in any great detail, let me simply say, "most [people] acknowledge that moral rights exist."[27] A question that Carmichael *et al* pose is "do the essential democratic rights always take precedence over other rights?"[28] The debate of liberal democratic values is important to my discussion of evaluation of successful or unsuccessful policy in that it shows one aspect of the Canadian context and a reality that is far from reconciled in the "Canadian" value system. From these differing views, we can imagine an action/reaction situation much like a pendulum in the matter of majority and minority considerations.

Having said all of that, I must re-introduce to the values argument the possiblity of a "constructed" reality revealing interests. Ever since Darwin, Canadians have seen the ascendancy of the importance of "objective" quantitative empirical research, and thus what comes to the fore are the values and interests of those willing to conduct studies based on scientific method or to pay for such research. Today, so called economic "experts" following a scientifically ordained irrefutability set the discourse and therein the standards of adequacy and excellence.

In a snowballing fashion, researchers add more legitimacy to a model and change the face of policy. This is an example of changed priorities transforming the model of policy-making, and in turn supporting an adjustment to the evaluative framework so that it would agree with the new priorities. As to the pendulum action I have set up, we find that the model predicated on a "just" society coupled with increased availability of funds during the social welfare years under Prime Minister Pierre Trudeau was to be replaced by the "economizing model" with a corresponding loss of interest in justice under the neo-conservative regime of Prime Minister Brian Mulroney. As Offe said, "it is possible to specify which substantive concerns are politicized at any given moment in a particular society."

In a very simplistic depiction, in the most recent Canadian government upon which we can pass judgement (the neo-conservative [laissez-faire liberal] regime of Prime Minister Mulroney), the issues of priority--articulated as what is political--included deregulation, free trade, limited government, deficit and debt reduction. The evaluative framework, if Offe is correct, would judge the success or failure of policy *according to these priorities* ; for example, to what degree was there deregulation? To what extent were trade talks pursued and to what end? Were interventionist policies foiled? How much has the debt been reduced in real or absolute terms and did we cut enough programs to reconcile our budget? Success in the time of the neo-conservative regime would have been judged acccording to criteria of economies and of individual liberties. Under this regime, one might assign the "public choice" model"[29] of public policy greater value over other policy models, for example, over others based on institutional or statist factors, and especially over others based upon humanist or environmental factors. But, as I have presented the case, the evaluation process is based on priorities and, thus, what is political. Therefore, these models are normative and prescriptive. The "public choice" model centres on the "utility maximizing individual." Those who would support this general model would concur with the particular view of human nature that holds humans as self-interested.

Stepping back in time in order to show contrasts, there was in the 1960s and 1970s, prior to the neo-conservative regime, a great priority awarded to civil and human rights. Policies in this time period would have been evaluated as successes or failures according to moral or human criteria. Further back in time, during the Great Depression, state interventionism was given priority in order to address the social concerns of unemployment and extreme poverty, and success was based specifically on criteria which can now be seen as opposite to the criteria of the evaluative framework of the Mulroney years. However, that being said, we must remember that the nature of society holds that whatever the time-frame, whatever the criteria, there are dissenters to the predominant evaluative framework.

A purely descriptive model of policy making that alerts us to when a policy initiative has succeeded or failed does not exist since a purely descriptive model, by definition, must be devoid of normative values. As I have argued, all policy models are normative and any measure of success and failure is normative as well. While models may appear descriptive and devoid of normative judgements, the serious student of political science must look for what is missing as much as what is presented. What is missing is the consideration that ofttimes political relationships are not as complete in their representation as they ought to be. To recall Charles Hyneman's democratic ideal, we should "estimate the closeness of approach to this ideal by finding answers to these three questions: a) how much the population shares, b) in how much of the critical decision making, c) with how much impact or influence."

In the seemingly descriptive article, "The Science of 'Muddling Through," Charles Lindblom contends that "[a]greement on objectives failing, there is no standard of 'correctness'."[30] Guy Peters, in his article, "The Policy Process: An Institutionalist Perspective," refers to the Lindblom model of "incrementalism" as devoid of values and normative judgement. Yet, when we examine it further, we find Lindblom to say that "[f]or the method of successive limited comparisons, the [evaluative] test is agreement on policy itself, which remains possible even when agreement on values is not." Consensus, then, becomes a value normatively prized in Lindblom's estimation of values. Lindblom's understanding of consensus makes no recognition of uneven power relationships nor recognition of those who are not invited into the policy making process in the first place. So is there a prescriptive standard able to judge the success or failure of policy? *All* normative models judge the success or failure of policy -- implicitly or explicitly-- by virtue of the fact that to make assumptions is to make predisposed evaluative judgements and evaluations.

John Kingdon (*Agendas, Alternatives, and Public Policies*) is one analyst who relies less on the theory of policy models. However, his explanatory account has the essence of the policy process "out there" waiting for a "window of opportunity". What Kingdon calls windows of opportunity may indeed just be cracks in the policy process that allow for either "mistakes" or "miracles" (depending on your perspective). Apart from the "agenda setting" aspect of Kingdon's piece, the windows of opportunity theory suggest a more chaotic understanding of the policy process. Despite Kingdon's admission that some patterns can be discerned, the explanatory power of Kingdon's work remains problematic for structuralists because of the appearance of "probabilistic"[3] randomness. Political science becomes more like political fiction. (I must admit that chaos theory holds much appeal for me in explanatory power, but this attraction breaks down when it comes to strategy and prescription.) For this reason, the predictive value of Kingdon's work insofar as success and failure are concerned might be minimal. Yet Kingdon contributes to our understanding of the success of policy by explaining that "making it onto the agenda" is not sufficient for policy success.

Melissa Haussman, in her article, "The Personal is Constitutional: Feminist Struggles for Equality Rights in the United States and Canada," gives us similar concepts to Kingdon's "windows of opportunity" when she speaks of "political opportunity structure." She understands too the power involved in the "universe of political discourse." One should be careful not to extrapolate her arguments about structure and discourse surrounding constitutional policy to tax policy even though the time frame and institutional framework may be similar. Neither should it be assumed that women's minor role in the tax policy field (compared to women's active and influential role during the patriation of the constitution) *necessarily* precludes the event of meaningful change. As Virginia Sapiro suggests in her article, "When are Interests Interesting?" in some instances throughout women's political history, "women's own actions have played only minor roles in some of the most profound legal and policy changes in comparison with other current problems and features of the political system."[32]

In Canada, another element of the political opportunity structure, as outlined by Haussman, includes *stable* political alignments over the last few years in Ottawa's majority government-- a government uninterested in radical tax reform. After the last election with the stunning showings of new parties, the Bloc Quebecois and the Reform Party of Canada, the stability of the government may not be so secure. The Reform Party of Canada has demanded that tax issues be put on the political agenda, but given the party's decidedly anti-feminist perspective, tax considerations of the type for which feminists lobby are unlikely. Yet, should the Reform Party push the electorate too far to the right just as the politics of scarce resources hit home, a backlash may bring about heightened awareness of the plight of women. [33] Finally, and interestingly, since Haussman's study extends only to the bringing about of equality rights in the constitution, her study does not include a discussion of the Charter of Rights and Freedoms, itself, creating a political opportunity for women. The ability of the court to strike down legislation may provide the most instrumental political opportunity by which the inequity of women's burden of taxation (such as on child support payments) can be addressed.

In the past, the responsibility for attempting to make the outcomes of policy desirable, and not disappointing, has stretched from responsible citizenship (as it relates to electoral politics, and policy "consumption") to sensitive and responsible governments (as they relate to setting agendas, formulating, administering, regulating, and implementing policy). The success of policies has depended on people acting within and without political and governmental frameworks. Success is not easily quantifiable, and policies can have varying degrees of success including partial successes. Success is not absolute or binary, yet anything short of absolute success is sometimes perceived as a failed policy.

Should the success or failure of policy take into account the odds which are overcome? In some cases, could "the greater the resistance overcome," translate into "the greater the success of the policy?" Surely, full passage of a policy of a "housekeeping" or "editorial" nature which is incrementally made cannot be easily compared to modest gains or partial successes in the more controversial area of natural or human rights. More thought is needed to establish such a correlation however. Indeed, citizens and government members are sometimes urged to accept responsibility for "realistic" expectations of problem solvability, to lower their expectations to allow for partial successes. This request must be met with skepticism, however, since such urgings indicate political management using the social production of meaning. If budgets remain the priority, many political paradoxes will not seem solvable, and remember, what is considered "solvable" is also part of an evaluative framework. Certainly for feminists, frustration sets in despite positive policy changes because of the large systemic nature of the problem of inequality. Success is difficult to measure.

Marginalization: Outside looking Inward

In addition to our simplified, ideological world, Canadians live in a patriarchal society, that is to say that the androcentric experiences and understandings have been codified and legitimized systemically as "objective truths." Yet these "truths" are not objective by virtue of their source which make them truly subjective. These "truths" nevertheless are understood collectively as our "common" sense. Our common sense by virtue of the fact that it is common leads us to question thought outside our common understanding, thus our common sense "imprisons" our thinking, to borrow a term from Charles Lindblom.[34] "Patriarchal assumptions about the appropriate 'place' for women to occupy in 'man's world' are so seamlessly woven into the thought structures and social policies of most western cultures that they seem to dictate the 'natural' way for things to be,"[35] explains Lorraine Code in her chapter on feminist theory in *Changing Patterns: Women in Canada.* She continues,"myths [are] devised by men, but internalised by women to the point where they live unthinkingly by them."[36] That our world is patriarchal is disputed by so few, I do not feel the need to defend my statement that it is so. Interestingly though, patriarchy, Gwynne Dyer argued recently (in the best of Canadian television documentary tradition), is not immutable given enough political will. Be that as it may, the male perspective continues to be "systemic and hegemonic."[37]

In the context of a patriarchy whose ideology is mutated and becoming less definable and more emotive, the study of public policy in Canada largely employs a simple economic framework, and in the example of the public choice model, we find the pervasive application of economic/business analysis, justifications, and prescriptions to the political realm. As only one option counted among the many options of analysis, the "business" perspective[38] increasingly revels in market-driven economics with its tenets of cost-effectiveness, efficiency, and "sink or swim" survival of the fittest. What accompanies laissez faire markets is a very vocal disdain for government involvement in business although quietly business accepts grants, loans at preferred rates, and tax incentives or tax holidays, which according to Donald Savoie, a Moncton University economics professor, amount to twenty to twenty-five billion dollars every year in Canada.[39]

Before I begin an alternative interpretation and evaluation, let me summarize what has been argued thus far. At the heart of their civil activity, societies have politics which vary over time and space, but are most certainly named and managed by the hegemony of an elite via the social production of meaning. The polis uses evaluative frameworks by which to judge degrees of success or failure of public policy, however the evaluative frameworks also most likely originate in hegemonic values (or less likely in counter-hegemonic forces mighty enough to challenge the hegemony; or elsewhere not herein of concern or mentioned). Canadian society, within a context of patriarchal societies, has over time come to understand as common sense a simplified, mutated ideological, economic model as the status quo in public policy. Indeed, our thinking is imprisoned by this model so much so that it is difficult to imagine other alternatives. To effect change, we must accept alternative understandings and world views.

Rarely since the early 1980s has tax policy been explained using anything other than the economic perspective of business at its centre: therefore at this time, the business perspective is the status quo in taxation matters. This has not always been the case. Not long ago, social concerns were a large consideration. My examination is different yet again but it is more closely aligned with a social perspective than with an economic perspective. I utilize a feminist perspective and its actual constituency of support may well be larger than that behind the business perspective.[40] My perspective claims that the tax department sees the family in terms of production, revenue, and consumption rather than in terms of sharing, affection, kinship, and well-being. My perspective discounts to a large extent the law and the courts as the "mind of society"[41] because of their codification of malestream thinking which understands the law as "neutral," "objective," arbiter among conflicting interests. My perspective does not subscribe to the notion that women are an interest group.

My approach will appear to be outside the realm of "common" sense and as such, I will be asked to defend my approach. For this, as a feminist, I make no apologies, because being beyond common sense is a necessary precondition in a feminist analysis. Indeed, "gender consciousness is a necessary condition for the existence of feminism."[42] Being beyond common sense is congruous with feminist arguments that women find themselves outside of the realm of public policy and especially outside business and taxation policy. Women's understandings are often peripheral to those ideas espoused as held in common. "Common sense," formulated, assigned, and repeated by men, comes then to be understood as "common" sense, a truth. Common sense reflects the status quo. Feminist analyses which speak to alternative understandings and change are therefore threatening to the the status quo. Common sense on the other hand then, in and of itself, perpetuates the treadmill upon which women find themselves situated. To fully participate in my feminist analysis then, the reader must suspend disbelief in common sensical tax matters. What, then, would I have the reader understand?

Women live "bi-gendered" lives. All of what women experience fills their "bi-gendered" existence. Women have their women-centred understandings and perspectives, yet much like fellow travellers in another country, they have their "when in Rome, do as the Romans do" relation to men in male-centred societies.

To help explain a woman's experience, let me use a simple bi-lingual, bi-cultural, and to introduce a new lexicon, a bi-genderal example. The woman's centre or focus is understood as her mother tongue. While she might be flawlessly bi-lingual, she has at her essence her mother tongue. So it is that women can and do live, work, and play in an androcentric world with equal and even superlative functioning. To find the women's perspective, one must focus on the essence of what it is to be a woman as experienced by women since to try to find women in an androcentric world only discovers the "fellow traveller" components. Catharine MacKinnon explains the significance of this relationship of women to men: "Each sex has its role, but their stakes and power are not equal. If the sexes are unequal, and perspective participates in situation, there is no ungendered reality or ungendered perspective."[43]

A feminist perspective carries this understanding or intuition further in that it exposes the gendered nature of our society by promoting the gendered aspects understood by women. Just as one's understanding of one's language and culture is personal and subjective, a common articulation of language and culture is not precluded. A women's understanding of gender too is subjective, yet common bonds based in "otherness" are found with other women. Women naturally share common bonds with men with whom women share larger communal experiences not related to otherness. When one is asked to define their cultural identity, the bonds are usually vague, yet very strong. When asked to express identity in sisterhood, the bonds are none the less vague, yet equally as compelling.

At the outset of her collection of essays regarding feminist methods, methodologies and epistemologies, Sandra Harding asks, "is there a feminist method?"[44] To answer, I believe so. What would differentiate a feminist analysis from another more traditional analysis? Harding explains that the difference does not lie solely in the method of research but rather it must be broadened to include:

> alternative origins of problematics, explanatory hypotheses and evidence, alternative purposes of inquiry, and a new prescription for the appropriate relationship between the inquirer and her/his subject of inquiry.[45]

If one had to reduce or simplify a feminist analysis to a few short words, one would not go far wrong in citing Harding's words to do it. Here she captures the concepts of marginality or "otherness," an openness or willingness to consider the validity of alternative epistemologies beyond the realm of "common sense," the importance of relativity, the sense of the art of the possible or creativity in prescription. Here, experiential evidence is given enough credence to found any inquiry.

A feminist analysis must strive to be connected, comprehensive, and complete. For many who speak or write about controversial issues, their arguments are started and finished in too narrow a confinement of description, explanation, methodology, and prescription. Let me offer some examples: for those who merely describe the poverty of women and children, an analysis ends virtually before it is started: description in and of itself is not enough. Furthermore, how things are described has at the heart normative values: for instance, the problem of the taxation of child support is seen by feminists as a social problem of the feminization of poverty, while for others, it is seen as an economic problem relating to the potential of lost revenues.

For those who explain all social ills on familial break down, thus allowing the explanation rather than the issue to become the focus, explanation in and of itself is not enough. Who decides which issues are explained? From whose experiences do explanations arise? Women experience things that they think need explaining. Of this, S. Harding presents some examples: "Why do women's life opportunities tend to be constricted exactly at the moments traditional history marks as the most progressive? . . . Why is risking death said to represent the distinctively human act but giving birth regarded as merely natural?"[46] I wonder why many women are more concerned with the taxation of child support and the hardship that follows, while many men are more worried about saving ground on the deductability of capital gains and Registered Retirement Savings Plans.

For those who conduct studies relying on the scientific method, making it the centre of the exploration rather than the inquiry itself, the method is not in and of itself enough. The method acts then as a framework into which only certain qualifiers are squeezed while what is omitted may be pertinent.

For those who simply prescribe, simple prescriptions in and of themselves are not enough since they have radiating repercussions; instead, prescriptions must have as their basis thoughtful consideration of the complexity of issues. For a generation who has suffered from the reduction of important issues to fifteen second explanations on television, such complexity of understanding is difficult to expect. Yet a complex, comprehensive analysis is essential to proper consideration of an issue.

Harding, practicing a complex feminist methodology, argues for a wide variety of feminist analyses and against a single distinctive feminist method of research, her argument being consistent with the feminist understanding that there is no universal woman or no one feminism. Indeed, Harding coins the word "feminisms"[47] to include alternative understandings across class, race, culture, sexual orientation, and across the experience of individuals (subjectivity) and even within one's individual experience (role conflict). Indeed, with regard to taxes, there are, indeed, women among a sea of men who worry about the delisting of the deductability of RRSPS and capital gains. There are women involved in the *Kids First* group who argue for the right to deduct child care costs from their "intact" (not divorced) household incomes. (Members of *Kids First* argue that the deductability of child support is a special tax benefit for divorced men and the tax treatment penalizes marriage.) At the other end of the spectrum, there are women who worry about the taxation of child support.

To this wide range of feminisms, I must add the element of time since our feminisms are ever changing. For example, the Canadian Advisory Council on the Status of Women argued very differently on taxation issues in the 1970s than it did even in the 1980s. Furthermore, personal circumstances evolve over time as well: my tax concerns have changed through marriage, divorce, and re-marriage. For instance, I have a personal concern in that I have re-married, which has me in a curious position. My former husband claims a deduction for child support payments; and my current husband (who by law has no responsibility for my children) must by law claim them as deductions on his tax return because he is the greater wage earner in our current marital unit. Thus, the men in my life are entitled--and it is dictated by law--to the deductions and benefits for the children for whom I, as their custodial parent, am left to support and to care.

To reiterate and to illustrate an earlier point, the descriptions, explanations, and prescriptions centred wholly on my personal circumstance are not enough to resolve this matter. Analysts would have to be careful about the direction any reform took in this tax matter. Consider the implications for this couple: an Edmonton man who has sole custody of his two children sought recourse in 1994 when he was denied the federal child-tax benefit because "he is male."[48] His new wife, on the other hand, despite her having no legal or biological rights to the children, was eligible because she was the primary caregiver and the female in the house. To rectify my circumstance may change the situation of the wife of that Edmonton man in ways feminists would not desire. Any feminist remedy I seek must not be self interested, but rather it must have the best interests of women at heart.

Harding's defence for diverse approaches even goes so far as to include the best of traditional methodolgies which, despite finding it difficult to place women within them, have contributed significantly to feminist theory in the past. She also includes the "additive" methodologies (adding women to Marxism, adding women to liberalism, adding women to Freudian psychology) since they too have contributed significantly in the past.[49] While liberal feminists find it satisfying to add women to the current economic analysis of tax policy, that approach can serve as only one analytical approach, and ultimately by itself, it is not the best one since the "origins of problematics, the explanatory hypotheses and evidence, the purposes of inquiry and the prescriptions" will have at their heart, their first loyalty to economics (business and labour) and not women. The value of feminist methodolgies however is in their going beyond traditional or additive approaches. Therefore, it becomes apparent that--in a circular and dichotomous way--while there is no one distinctive feminist method, the absence of one specific method is in itself the feminist method. That being said, feminist method as it is recognized by most feminists nearly always involves consciousness raising.

As Harding suggests, a feminist perspective does not claim an objective knowledge independent of the inquirer's experience/situation. On the other hand, an economic perspective rooted in the patriarchal ruling group's subjectivity does claim such an objectivity. The notion of objectivity garners greater legitimacy in our society in these times, and such objectivity and legitimacy lead to society's understanding of what is knowledge and what is common sense. Traditional knowledge finds at its roots, according then to Harding's paradigm, the experiences, the problems, the observations, the hypotheses, and the prescriptions of men. Historically, women's contribution has only been interpreted and measured against a man's world. Joan Kelly-Gadol explains that women's history is placed alongside diplomatic history, economic history, and so forth and that the roles and position of women are compared to those of men (the benchmark) resulting in a loss of status for women. To show the significance of this, the Renaissance, often cited as an historical high point in cultural and artistic progress was not such for women who experienced the "domestication of the bourgeois wife and the escalation of witchcraft persecution."[50] The Renaissance, seen as the epitome of history, is assessed from the perspective of men.

"[O]bjectivity --the nonsituated, universal standpoint, whether claimed or aspired to-- is a denial of the existence or potency of sex inequality that tacitly participates in constructing reality from the dominant point of view,"[51] Catharine MacKinnon says. The question must be asked then: if "objectivity" is common sensibly understood as knowledge, can subjectivity also be knowledge? The answer should by now be clear-- subjectivity is knowledge-- indeed the only knowledge, afterall traditional knowledge is gendered since it is really men's subjective knowledge posing as "objective" knowledge. If this were common sensibly acknowledged, then it could be understood that women are knowers too. If it were understood that first, men's knowledge is subjective, and second, women are knowers too, then we must conclude that traditional knowledge is only ever half complete so long as it does not accept women's experiences, knowledge, and realities as legitimate. With this much experiential (subjective) knowledge missing or ignored, it is imperative to research and to record the realities of women's lives as women define them. Furthermore, the knowledge and understandings of men is currently based in the economic, market model with its propensity to count things. Susan McDaniel, another Canadian feminist scholar, quotes Jill Vickers as suggesting that quantitiative analysis removes human behaviour from its context, and by that the subjects of inquiry are not treated as people but only as data.[52]

We must begin, then, by suspending our belief in common sense to begin to understand that the traditional approach to the study of taxation policy or any policy is neither ungendered or objective but heavily interested and favoured toward male gender and subjectivity. In doing so we will come to understand that women-- who under the old paradigm lack epistemological credibility-- do have "ways of knowing" distinct from the traditional male knowledge but no less valuable.

After we have suspended our common beliefs, after we have come to understand the relations involved in any activity such as policy formulation or academic research, and after we have accepted that women have ways of knowing, we can begin to look at what a feminist methodolgy might include. Harding suggests that the best of feminist analysis and scholarship might contain three properties. [53] First, feminist analysis and scholarship must be reflexive, in other words, the researcher must acknowledge his/her own reflexivity or subjectivity in his/her project (for example: class, race, culture and gender assumptions, specific interests). "Name your subjectivity and how you suspect that you are shaping the research. Introducing your subjectivity enhances the objectivity."[54] This subjectivity contributes to objectivity, and thus, saves the project from questions regarding subjectivity and women's ways of knowing, because it claims no authority other than one based in the very subjectivity being questioned. This subjectivity is essential in order that the women's voice and point of view be salvaged from the curse of invisiblity. Subjectivity places the inquirer in the same critical plane as the overt subject matter.

Harding's second property is that feminist methodolgies must reflect women's experiences, the experiences for which women have sought explanations, introduced from a woman's perspective. As Dorothy Smith, a sociologist from York University, remarks, "[i]f we begin from a world as we actually experience it, it is at least possible to see that we are located and that what we know of the other is conditional upon that location as part of a relation comprehending the other's location also."[55] Of women's experiences, I am reminded of two typical reactions from people when I am asked about the topic of my thesis. I reply it is about Canadian tax policy and gender issues. Conceivably, it could be about any number of tax issues relating to either gender. Men have invariably looked at me in a puzzled way that demands that I give further explanation. Women, on the other hand, have nodded to indicate understanding: one woman known to me less than five minutes came right out with, "you mean, like the taxation of child support?" This must be what Dorothy Smith means when she explains that: "[w]omen are native speakers of this situation and in explicating it or its implications and realizing them conceptually, they have that relation to it of knowing it before it is even said."[56] The logic of feminist analysis and scholarship must rest in the primary focus.

Third on Harding's list of criteria for feminist research is that the study must be *for* women, that is to say, that it answers questions asked by women, and provides for women explanations of social phenomena that they want and need.

It must be noted that these three criteria do not exclude men or fellow travellers of the feminist cause from feminist methodologies. Men can and do conform to these understandings and Harding suggests further advantages to bringing men on board in feminist studies: ". . . men can and do contribute to feminist research – they may have better access to resources, to settings."[57]

Supplementing and complementing Hardings arguments, Professor Dorothy Smith, in her article, "Women's Perspective as a Radical Critique of Sociology" examines the differences in concerns between the legitimated and accredited administrative world (or the "authoritative" world) and the experiential world. While Smith applies her case to the sociological world, the reader is encouraged by the editor to apply the analysis to other fields, as I do in this political analysis. Smith agrees with Harding that the determinate position of society is that of a ruling-class, white and male, and against that position the values and interests women are placed. Concepts and terms, coined and understood by men, provide men with an ill-gotten gain in authority over women, and leave women alienated [58] and outside of the mainstream. Worse yet, women are left without the tools to analyze their own experience, and therefore they are alienated from their own experience as well. Male experience and subjective knowledge are the bases of the mainstream, and both are woefully out of synchrony with what women experience and know. From the basis of this stream, institutions including the church, academies, courts, commerce, and the state have elevated men to the highest positions all the while incorporating and codifying androcentric biases. (It has long been understood that men claim as their own the domain of business, of politics, and of law.) For instance, what is a crime is determined by the state; what is discrimination is defined by the courts; what is allowable under the law is often based on legal codes rather than considerations of justice. I am not arguing for the abolition of statutes and codes since they have ofttimes served and protected minority rights and human rights; I am just attempting to show that these ideas, concepts, and terms come from somewhere and have staying power, but they are not immutable. Moreover, women collude with these biased institutions by supporting and participating in them serving further to legitimize them. To summarize, until women are equals in the mainstream, it is more correctly called the "malestream."

To show the difference between what a differently ordered world might look like, let me share a brilliant example from Dorothy Smith's article.

> We might take as a model the world as it appears from the point of view of the afternoon soap opera. This is defined by (though not restricted to) domestic events, interests, and activities. Men appear in this world as necessary and vital presences. It is not a woman's world in the sense of excluding men. But it is a woman's world in the sense that it is the relevances of the women's place that govern. Men appear only in their domestic or private aspects or at points of intersection between public and private as doctors in hospitals, lawyers in their offices discussing wills and divorces. Their occupational and political world is barely present. They are posited here as complete persons, and they are but partial--as women appear in [. . .] the universe occupied by men.[59]

Smith tells us that in her field the sociologist is "he." Throughout the taxation process for women, the policy maker is "he," the administrator is "he," the judge is "he," the economist is "he," and the political scientist is "he." As Catharine MacKinnon concludes, "the state is male."[60] To use the patriarchal, mutated ideological, simple economic model for public policy, especially taxation policy, we are being asked to do nothing short of "suspend our sex" [61] and suspend the knowledge that comes from that.

To simulate in some small way for some of my readers who do not experience marginalization, think about how difficult it is when answering lengthy telephone polls to fit your personal experience into the tightly constrained interview. Think of how your mind races to include explanations, qualifiers, and expansions. Your experiential knowledge is not easily squeezed into the framework provided. Women are asked to squeeze their lives into inappropriate and incomplete frameworks.

As was mentioned in my introduction, tax policy is not commonly thought of as a women's issue. However, it is of concern for women and as much a part of our experience as it is for men. While it is a women's issue, it is not an specific issue for all women. Qualifying notes are necessary, even if they are rather obvious. For the specific case of the taxation of child support, it is overwhelmingly women who suffer discrimination. While it is overwhelmingly women who face discrimination in the matter of child support taxation, only a small subset of women are affected by this issue. Many women do not have children. Of those who do, many are not estranged from their husbands. Many women cannot call upon or count upon a partner for financial help in the support of their children. Most separated or divorced women with custody of their children do not receive child support payments, despite court ordered agreements. Clearly, the taxation of child support can be seen as an experiental concern of a select group of women indeed. Nevertheless, the issue is an important one and an analogy presented by Lorraine Code in the first chapter of *Changing Patterns: Women in Canada* helps to explain why. She describes an image (first imagined by Marilyn Frye) of each issue being a wire in a birdcage.

> . . . if one examines one wire of a bird bage, one can neither see the other wires nor understand why the cage is so confining. One might wonder why the bird would not fly around that wire and go free. The same would be true if one were to inspect each wire separately--it would not be apparent why any one wire would constrain the bird. It is only by stepping back to contemplate the entire structure--the interconnectedness and mutually enforcing system of barriers -- that one can see why the bird is trapped. Similarly, one needs to stand back from particular oppressive social practices to see their mutually reinforcing structures; to see, in the case of feminism, how patriarchy is constructed out of a number of practices which considered singly, may not seem particularly significant or oppressive. Yet together these practices form an intractable structure.[62]

If each wire were a policy field, the unfair taxation of child support is directly related to daycare, abortion, pay equity, and a host of feminist issues.

By way of further qualification, race and class must be at least mentioned. Except insofar as many non-white women experience extreme poverty at an alarmingly higher rate relative to their numbers, and therefore only by their sad misfortune are they spared contests with Revenue Canada, taxation problems are not race specific. However, questions of race are not divorced from class issues. While tax discrimination is undoubtedly a question of class, and not to suggest it as any consolation, the poorest of the poor are not those most affected by this policy. Again, like the wires of the birdcage, discrimination based on class, race, sexual orientation, religion, age, or disability contributes to the system of barriers. That we would see more white women being affected by this discrimination is not to draw attention away from the struggles of others. Largely, the public face of advocates for tax reform is that of liberal feminists who seek change through institutions (as distinct from the changing of the institutions themselves).

Equality and discrimination:

Let us turn to matters of gender equality and discrimination in Canada. Equality in a liberal democratic polity is usually discussed in terms of horizontal equality, or equality among equals. This has become even more apparent in very recent years as tolerance for "special interests" falters. Decidedly, feminist analyses must be more concerned with vertical equality since women, as the focus of analysis, start from a disadvantaged position. Some members of Parents Against Child-support Taxation (PACT), some lawyers, some judges, and some academics with whom I have discussed the issue of child-support taxation have attempted to argue that the issue is sex-neutral (and therefore not a concern for women only); that is to say, the persons paying child support are not always men and the persons receiving child-support are not always women. While their supporting statement is true, their reality is skewed--the issue is not *gender*-neutral. Yes, some men are affected by the discrimination of this tax policy and this was made apparent by the two men among the thirty-five women at the my first meeting of PACT. Nevertheless, ninety-eight percent of those discriminated against in the matter of inclusion/deductability of maintenance payments in the *Income Tax Act* are women. And above and beyond the matter of discrimination against women are those especially hurt--the children.

The equality debate begs important questions about role equity and role change. Those liberals who subscribe to the sex-neutral theory will, more than likely, see the battle as one of *role equity* which can be resolved by liberal reform. Those who are more inclined to view the battle as a gendered one may ultimately be more pessimistic about the chances of the end of child-support taxation because they understand that true equality comes from *role change.* A serious drawback for women who collect alimony and/or maintenance is that their tax burden will be quite high if they decide to return to the labour force. Therefore, there is little motivation for divorced or separated women with children to enter the work force in low-paying jobs only to find that, because of their burden to pay all of the tax on the child support payments, their already low salary is bumped into a higher tax bracket. Put simply, through the perpetuation of taxation on child support, the cycle of women and children in the home, in poverty, continues. I would argue that to take women from an economic inferior position and to treat women in a fair, just, and equitable manner would, in and of itself, represent *role change.* Joyce Gelb and Marian Lief-Palley suggest something similar when they say that [equal pay for comparable work] is thought of as a role equity issue but because of its redistributive implications for women and the economy, it appears to be close to the role change end of the continuum.[63]

For most western cultures, the concepts of patriarchy and woman's place are imprisoned in contemporary thinking. Androcentric beliefs have a long history. Much of what is understood in western civilization can be traced back to Aristotle who lived over two thousand years ago, between 384 and 322 B.C. His subjective thoughts regarding women, now understood as "biological determinism," have had staying power far beyond his grave. Biological determinism has at its heart the notion that women --fated by their biology--are not capable (physically or intellectually) of filling certain jobs, or differently said, "women's nature" leads to "natural" roles. The implications of this are far-reaching. "Aristotelian notions of the biologically determined inequality of women and men can be discerned in the assumptions underlying much of nineteenth and twentieth century legal practice."[64] What follows in current day is what we have witnessed in the Supreme Court ruling against the claiming of child care expenses as a business expense in the *Symes* case. Elizabeth Symes, a Toronto lawyer and mother, argued that her child care expenses should be fully deducted for tax purposes from her income as a self-employed person. Child care by Aristotelian understandings is one part of a mother's natural role. This Aristotelian notion can be applied to the matter of tax policy too in that child support is taxed in the hands of women based on the assumption that it is women who will have the lower wage upon which the taxes are calculated.

In light of enduring biological determinism, equality has become central to any feminist issue. Lorraine Code cites Betty Friedan as understanding that "[f]eminism . . . is less a theory of women's oppression by patriarchy than it is a theory of human rights."[65] Social justice demands equality. As a motherhood issue, few men or women would argue against equality between the sexes as it is now laid out in the Charter of Rights and Freedoms, so long as it is applied to realities that we as a society understand, for example: with regard to voting rights, property rights, or equal employment standards. That which has been achieved becomes common sense. The problem of imprisoned thinking arises out of that which is not yet achieved. By introducing another paradox which complicates matters further, Code makes a good point when she asks of sex equality: "equality with which men?. . . "[M]en themselves are not equal under capitalism."[66] Code concludes that "[w]omen are not likely to achieve any liveable form of equality as long as the structures of such societies remain unchanged."[67] She is right. But we measure our successes in short steps rather than at our destination. In my understanding of success, any movement along the path to equality must be measured as a success.

Gender equality has been a concern for Canadian women as long as there has been a nation-state named Canada, and various documents have attempted to address it. The political guarantee of gender equality was re-affirmed relatively recently in Canada by way of two documents, each garnering deep political legitimacy. First, the United Nations Assembly's Convention on the Elimination of All Forms of Discrimination Against Women in 1979 (to which Canada was a party) defined the matter of equality and discrimination at the outset in Article 1. [68] Based upon Article 1, the following definition of "discrimination" (which is careful to distinguish identical treatment from equal treatment) is operative in Canada:

> " . . . discrimination means treating people differently because of their race, colour, sex, and so on with the result that the complainant suffers adverse consequences, or a serious affront to dignity; the motive for the discriminatory treatment, whether occasioned by economic or social considerations and whether those considerations are soundly or fallaciously based, is irrelevant, except possibly in mitigation of the penalty. Identical treatment is not necessarily synonymous with equal treatment, because discriminatory results -- offensive to the spirit of human rights legislation -- may occur if identical treatment is suddenly imposed on those who cannot effectively utilize it, due to past patterns of prejudice and exclusion. . . . [69]

Following upon the heels of this conference, women won the fight to include equality rights under Sections 15 and 28 within the Charter of Rights and Freedoms in 1982. The Charter constitutionally guarantees gender equality via Section 15:

> (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability . . . .

In 1984 a federal parliamentary task force was set up to identify discriminatory laws, and in 1985 a subsequent report with eighty-five recommendations was released. Also in 1985, the equality provisions of the Charter came into effect. Following this in 1986, the government issued its response in a document called *Toward Equality* which affirmed the government's commitment-- at least in principle-- to equality rights.

Since that which is internationally sanctioned and constitutionally founded-- gender equality-- is not yet part of the experience of most women in Canada says much about the efficacy of the political system, symbolic politics, differing perceptions, and systemic discrimination. Partly to blame is the social production of meaning behind the illusion that the Canadian Advisory Council on the Status of Women has identified:

> The illusion that women have achieved equality is almost as pervasive as the reality of oppression. Women's inequality is invisible because it is so ordinary, so massive, and so accepted. The failure to see women's inequality is not, however, simply the result of socially induced blindness. Not seeing it is useful; it serves the interests of those who are dominant. Perpetuating the myth that women have already

achieved equality justifies doing nothing.[70]

The most predominant institution to figure in deciding contests of equality is the judicial system, including the courts of law. Beverly Baines, who has written a well-researched article entitled "Women and the Law", has much to say about equality cases. "In virtually all of these cases the courts rendered decisions that lagged behind the changing patterns of women's lives."[71] Again, an example of outdated judicial consideration is the *Symes* case for deducting childcare. Baines found that all courts use the same theory of equality: ". . . alikes must be treated alike or equally, while unalikes must be treated unalike or differently."[72] Supporting my previous argument that institutions are male conceived and male understood are Baines's findings that until the Charter of Rights and Freedoms, "[w]hen women won their cases, they won only because the judges found some basis for treating women like men,"[73] and ". . . treating women like men is no less gender-biased than is defending male supremacy."[74]

Some cases have been decided thus simply because the practice had been carried on "for at least one hundred years."[75] Baines uses the example of the decision to deny status to native women who married non-native men to show that history and tradition have for a long time justified the harsher treatment of women.

Disturbingly, under the Canadian Bill of Rights, "[i]n cases brought by women, the judges rationalized and upheld laws that treated women more harshly than men;" and, curiously, ". . . in the cases brought by men, they rationalized and upheld laws that ostensibly benefitted women."[76] Through her research, Baines proves that "a clear majority (nine out of thirteen) of the Supreme Court of Canada judges who decided [Canadian Bill of Rights] cases subscribed to Aristotle's defence of male supremacy."[77] Time will soon tell if the Supreme Court of Canada, using the Charter of Rights and Freedoms, will replicate the outcomes of its predecessor, the Canadian Bill of Rights. Equality is not defined (neither is discrimination) except by previous interpretations, which puts an enormous burden on women before they even begin to litigate the Charter sex equality cases.

Baines's work shows that only six percent of 796 federally appointed judges are women, and female judges number even fewer at the provincial level across Canada at

4.6 percent of 846 judges appointed.[78] That the numbers may have changed in the very few years since her study is a moot point: the Canadian judiciary remains overwhelmingly male. Were there more female judges is not enough to stack the cards, since of course there is no guarantee that women take their experiential subjectivity to the bench. However, at least on occasion, Bertha Wilson, Beverly McLachlin, and Claire L'Heureux-Dube have not disappointed us. The systemic barriers that female judges must overcome rest in androcentric thinking raised to the level of "truth" codified as "objective" science. According to Catharine MacKinnon

> [t]his law aspires to science: to the immanent generalization subsuming the emergent particularity, to prediction and control of social regularities and regulations, preferably codified. The formulaic "tests" of "doctrine" aspire to mechanism, classification to taxonomy. Courts intervene only in properly "factualized" disputes, cognizing social conflicts as if collecting empirical data.[79]

As to the likelihood of Thibaudeau winning her case at the Supreme Court, history may dictate that she will not; after all, "[t]he Canadian Bill of Rights sex equality cases were . . . unrelieved by a single favourable judgment."[80] Given the importance of tradition, history, and precedence accorded by our judicial system and accepted by our society, one is hard pressed not to extrapolate the dismal record of unfavourable findings regarding equality cases under Canada's previous Bill of Rights onto the current Charter of Rights and Freedoms to conclude that Thibaudeau's case will be unsuccessful at the Supreme Court level.

Conclusion: The Need For A Feminist Analysis of Public Policy

To conclude this chapter on perspectives, when all is said and done, an analysis that has women at its heart runs the risk of being "ignored, trivialized, or appropriated."[81] So as to avoid such an end, women are baited to use one of the traditional approaches, such as applying the liberal feminist approach to the analysis of tax policy, even though the depth of analysis is not enough by doing so. Yet, a larger, radical feminist approach which would undoubtedly examine systemic sexism and question the role of women and the family produces a dilemma in that it will not seem to address the experiences of women in the short term. Trivialized, radical prescriptions are never implemented, and therefore, never have the chance to be effective.

As a feminist researcher, my work, outside the confines of common world view, rhetorical explanations, scientific method, simple solutions, and common sense, will be met with some confusion by those who have not questioned their own imprisoned thinking about economic matters, yet my work too is rightly subject to scrutiny. My studies fall outside of the usual frames of reference for the examination of tax policy. My scholarship, as Harding suggests, may be denounced and trivialized as biased and subjective. I will be pressured to conform and to collude with the usual arguments for the giving of tax preferences to men and to business. As it is for many female scholars, the basis of my epistemology will be questioned.

The constructed world of political science is separate from the experiential world. Dorothy Smith says in her article that "[w]omen's perspective . . . discredits [political science's] claim to constitute an objective knowledge independent of the [political scientist's] situation."[82] The separation between the constructed world and the experiential world must be undone.[83]

CHAPTER TWO

TAX POLICY AND THE TAXATION OF CHILD SUPPORT

Taxes can be categorized as either direct or indirect. The definitions of direct and indirect taxes commonly used and accepted by the courts came from John Stuart Mill in 1848: a direct tax is "one which is demanded from the very persons who it is intended or desired should pay it," and indirect taxes are "those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another."[84] This thesis is not concerned with indirect taxes such as corporate income taxes, sales taxes, or custom and excise taxes, but rather, with the direct taxation of personal income only. While many taxes affect women (directly and indirectly) I will restrict myself to section 56 (under the subtitle of "computation of income"), and its corollary, section 60 (under the subtitle of "deductions from computing income") of the *Income Tax Act*.

In this chapter, I will give a brief history of taxation policy and the taxation of child support with reference to the jurisdictional relationships between divorce and child support. After discussing the ambiguous concept of income, I will present the case for the current androcentric underpinnings behind the political considerations with regard to tax deductions. Certain taxation terms relevant to the taxation of child support will be examined, and the process by which taxation policy is formulated and implemented will be revealed. The process behind the Royal Commission on Taxation (the Carter Commission) and some of its results will be presented. A brief consideration of involvement of political parties, including the individual initiative of one Member of Parliament, will show that they have a role to play in process. Finally, the feminization of poverty and a demand for well-being of children are named as the rationale for a contest against the taxation of child support.

Historical Background:

A brief history of tax policy, starting with its constitutional basis, is necessary to set the scene. Canada's tax policy is rooted firmly in, and as such has ofttimes followed historically, the British model: "[t]he Canadian budgetary and revenue raising process is derived almost totally from the British procedure and is really at the root of the historical function of parliament."[85] The *British North America Act of 1867* (BNA Act) first established tax powers: the federal government could raise revenue "by any mode or system of taxation;" the provinces were restricted to "direct taxation within the province" for "provincial purposes." Only three types of taxes existed at that time: custom duties, excise duties and property tax. From 1867 until the first world war, the federal government, while having the power to tax directly, refrained from imposing direct taxes, preferring instead indirect taxation such as customs duties and excise taxes.

My focus is personal income tax, a direct tax, which was first introduced provincially by British Columbia in 1867. Other provinces followed, for instance Alberta in 1932. A national personal income tax was introduced in 1917. The legal limitations of taxing powers outlined in the BNA Act were retained in the *Constitution Act of 1982.* Where there is conflict between the orders of government, the federal government enjoys paramountcy. If we have the feeling that the federal government (Revenue Canada) is more involved than the provincial government with the taxing of our income, it is partly because the federal government has agreed to act in the administrative role of collecting personal (and corporate) income taxes for the Northwest Territories and the provinces (with the exceptions of Quebec which collects its own taxes, and Ontario and Alberta which collect their own corporate taxes.)

In the specific case of alimony and maintenance payments, Canada's division of powers also come into play. First, "spouses who separate (either by agreement or through a court order) are still legally married"[86] and therefore, for them, the process of determining maintenance and support obligations is governed by provincial/ territorial legislation. Generally, the collection of support payments is a provincial responsibility, and indeed, it was provincial governments who, concerned about the collection of alimony, called for inclusion/deductability sections in the federal *Income Tax Act* . As one can imagine, given the mobility of spouses, inter-provincial boundaries can complicate matters relating to separation. When a separation moves toward divorce, however, issues such as maintenance and support obligations to be determined after divorce fall within federal jurisdiction, under the *Divorce Act* .[87]

Although tax matters are delineated by constitutional jurisdiction, it must be made clear that these parameters have historically been subject to extra-jurisdictional influence, as was pointed out in the previous paragraph, by provincial requests for the inclusion/deductability sections of the federal *Income Tax Act*.. These constitutional matters are not written in stone even now. Canadians saw a devolution of powers as recently as the 1995 federal budget simply through a change in the way in which the federal government makes transfer payments to provinces. Jurisdictional concerns are often reviewed for reform especially in these times of diminishing resources. For example, a *Maclean's* magazine article, "The Revolutionary Bomb in the Budget," by Peter C. Newman presented a proposal by Sam Slutsky of Winnipeg that would see Revenue Canada eliminated as a government department and replaced with an independent commission. In this scheme, personal income taxes would become the domain of the provinces; "[e]ach province could tax its citizens at different levels and issue its own list of exemptions, within negotiated limits,"[88] and corporate taxes would fall within the domain of the federal government. "Such streamlining and elimination of duplication in administrative procedures would save governments, individuals and businesses 'billions of dollars'."[89] These are no idle musings; Slutsky, as a tax "expert," has in the past advised three prime ministers, and recently held audience with Jean Chretien and federal-provincial leaders who agreed to consider the idea further.

Jurisdictional matters aside, taxation policy is a matter of both economic and social policy since taxes are collected for their revenue potential, redistributive effects, and (economic) stabilizing properties.[90] According to the report of the Canadian Royal Commission on Taxation (The Carter Commission 1966), the goals of Canadians are as follows:

1. the maximization of the present and future output of goods and services by Canadians,
2. equitable distribution of goods and services desired by Canadians, and
3. the protection of liberties and rights of individuals.[91]

The Commission suggested that these goals ought to be reflected in any manifestation of policy reform. Equitable distribution of goods and services remains a stated goal, but increasingly since 1966, economic efficiency has usurped equity.[92] Despite the current economic focus, taxes can and should be part of deliberate social policy.

Nevertheless, despite our stated made-in-Canada objectives, it is significant that, similar to other policy fields, much of Canadian income tax policy and reform are not conceived at home, but rather they are modeled in large part after American experiences-- a fact which should alert any student of tax policy to question whether these goals are, in fact, based in Canadian specificity at all. For predictive value, it is important to note that while being firmly rooted in the British model, tax reform often follows the American model contemporarily.

The Concept of Income and the Politics of Tax Preferences:

It might seem incredible to most of us that such a legislative act as the *Income Tax Act* could exist without having contained within it a clear definition of the word "income," but this is, in fact, the case. It should be noted however that within Canadian political culture and history, the clarity of definition is often missing from legislation. Increasingly, partly owing to a rights-oriented liberal understanding of how things ought to be, many disadvantaged groups are calling for more clarity in order that grievances and remedies or compensations are definable without doubt. Those who support further clarity often clash over the normative ideal with conservatives or traditionalists who believe that the law is fluid enough and flexible enough to serve all equally. Those who hold the latter perspective fear that the rigidity of definition would grind process to a halt. For examples of this conflict of perspectives, recall the debates surrounding a written/unwritten Charter of Rights and Freedoms in 1981 or the debate regarding the defining of a "distinct society" clause in the constitutional debates of the late 1980s.

The *Income Tax Act* only lists what items are to be included-- and excluded-- as income.[93] Income, not defined in the *Income Tax Act*, remains no more than a political concept. In order to define income, Salyzyn, in his text on taxation policy, refers to *Webster's* and the *Oxford English* dictionaries and then to the definitions provided by economists, the "experts" who by naming and defining end up granting further accepted legitimacy to their own creation. Definition, itself, sets up the evaluative framework by which tax treatments are judged. That income is usually conceived as economic by nature fosters the understanding then that the term is subject to the evaluative framework designed and legitimized again by economists. That it is understood by economists does not in itself preclude a feminist understanding of the term, after all feminist economists exist; however, the influence of the latter as is the case with all feminist streams, is not the dominant stream of thought within economics.

Income is often understood by economists as "what comes in" either as money or goods and services convertible to monetary worth. Some economists argue that income must "flow"; therefore, savings, equity, registered retirement savings, and pensions while part of one's net worth, ought not to be taxable except insofar as one makes interest on savings or capital gains on investments. "Funds directed to savings and investment could not constitute part of one's income because no current benefits or satisfactions are derived from them."[94] Family trusts, of which there are more than 110,000 registered in Canada, fell within this group until the federal budget of 1995. "People who set up trusts often shift part of the trust's taxable income to a child or spouse in a lower tax bracket. The 'preferred beneficiary election' allowed the income to be allocated to close family members and taxed in their hands, even though the income was never actually paid to them."[95] "A family trust can enable you to divert income from yourself, in a high tax bracket, to other family members in lower tax brackets, a trust also can help you divest the ownership of certain assets, such as recreational property, while ensuring your right to lifetime use of that asset."[96] "Family trusts have allowed some of Canada's greatest fortunes to pass untaxed from one generation to another."[97]

If one accepts the economic criteria of "what comes in" and "flows", child support must be considered income. So under the economists' model, the argument that child support is not income is a weak one--child support comes in and, in the great majority of cases, it "flows." But like family trusts, questions regarding the source and destination of such funds need to enter into the consideration. And more important, questions ought to arise about the fairness and equity behind child support taxed in the hands of the often poorer custodial parent when juxtaposed with tax shelters in saved and invested income accruing for the privileged. If the definition of income is problematic, the concept of income becomes even more so if it is used as an analytical tool such as it is in the the case of taxation. Susan A. McDaniel explains that, "[t]he power to label gives those in a dominant position in society the capacity to categorize and discuss the experiences of those who have less power."[98]

Once the definition of income is decided, the forces manifested in hegemonic political elites will determine what a tax deduction is. For instance, the discriminatory taxation of child support to the disadvantage of the recipient and the deductability of child support to the benefit of the payer seems a sad reflection on the political will of the patriarchs of our society when juxtaposed with what I now present to you as the "escort" example. Rosemary Speirs, a writer for the Toronto Star, reported in February of 1995, one week before the federal budget was due and when there was much talk of tax issues, that Liberal Member of Parliament, George Baker of Gander-Grand Falls, Newfoundland, noted that escort services advertised in the yellow pages offered tax receipts. As a reference case, Mr. Baker

> . . . sent a letter to Revenue Canada asking whether a company would be eligible for the tax deduction for an evening of wining and dining a Japanese businessman. His scenario included hotel expenses, a massage at a fitness club, a dinner at a posh restaurant, the cost of an "escort," admission to nightclubs, cover charges for floor shows, dinner including a $200 bottle of Dom Perignon, and a Rideau River Cruise.
>
> Revenue Canada wrote back saying the cost of admission to the sports club and the massage would not qualify, and the $200 dollar bill for the Dom Perignon might be questionable depending on the circumstances. But all else was a go.[99]

To be fair to the Liberal government, the deduction for such entertainment was reduced from eighty percent to fifty percent in the 1994 federal budget, but this does not lessen my disgust with a system that gives tax preferences to business --mostly me -using escort services, when custodial parents--mostly women-- pay tax on monies deemed necessary by the court for the care of children.

In another example, what of sports "box-seats"? As reported on the CBC television news on February 22, 1995, a large portion of the buying of seats or private boxes at sports events such as hockey or football is tax deductible. Such deductions are claimed to be necessary expenses of doing business in Canada, and such claims are usually followed by explanations of Canada's need to be competitive, and of the threat of "flight of capital." One enthusiastic interviewer (enthusiastic no doubt at the tax deduction windfall conferred upon him) admitted that the boxes are used only about fifty percent of the time for entertaining potential clients and are necessary, he thought, "to soften them for business." Further to the seats being used by businessmen in hopeful and hypothetical circumstances only fifty percent of the time, twenty five percent of the time they were used by employees as "perks," and the last twenty five percent of the time, they were used by the directors and their families.

A third example, not meant to belabour the point, is one from my own experience. Recently, while accompanying my husband for lunch, I was seated next to a table of men dressed in white shirts and ties who seemed to be having a happy reunion of sorts over lunch. After their lunch, as they were putting on their coats and walking out the door the youngest of them remarked that they had better at least mention the word "business" since they were writing this lunch off (as a tax deduction). To this remark, they all laughed. Many use the business lunch as a time to catch up on current aspects of the personal lives of their friends.

The "escort" example, the "box-seats" example, and the "business lunch" example, when compared to other tax deductions such as the inclusion/deductability system of taxing child support-- by all analyses--must indicate the value of business and sports (the traditional domains of men) over familial and social concerns (the traditional domains of women) as the influential forces of our Canadian society. The money the government foregoes through deductions for escorts, sports seats, and business lunches is not information that I have been able to obtain from Revenue Canada. On the other hand, information about the money collected by the government through the taxation of child support is readily available and stands at approximately $330 million[100] representing approximately 0.3% of total personal income.

Popular acceptability of taxation is not unrelated to political legitimacy. Yet, hegemonic discourse socially constructs acceptability and legitimacy on a number of fronts. Such discourse grants credence to and creates an aura of immutability around the *Income Tax Act*. The Act, it should be remembered, is merely an Act of Parliament. In this light, what is listed as income by the Department of Finance is essentially arbitrary and subject to political scrutiny. Reform depends on political will.

Certain terms used in the usual economic analysis of taxation are also used in the feminist analysis of taxation since it is the socially produced meaning behind the term that is to be critiqued. These terms include income source, ability-to-pay, income splitting, certainty and stability, and tax units. As easily as is the concept of efficiency, the concept of equity should be woven through these terms.

Source of income affects what tax treatment will be indicated for that income. Section 3(a) of the Act mentions four main sources of income: (i) business; (ii) property; (iii) office; and (iv) employment, each of which is calculated in accordance with rules from various parts of the Act. Alimony and maintenance payments, according to Section 4(2), are not attributable to a particular source or to sources in a particular place.[101] However, "income" is a general term--an ambiguous one at that--and for tax purposes it is not restricted to income from the four specifically mentioned sources.[102]

As I have shown, child support is, by the economists' conceptual understanding, income. Yet, as I have hinted, much else of "what comes in" is income as well but not taxed as such. Money flowing from the "source" of income through our pockets to registered retirement savings plans is income (which the government has deemed a tax deduction). Money realized from the sale of an investment property is income (which until the previous Canadian budget [March 1994] was tax exempt under capital gains provisions). Money set aside in family trusts for beneficiaries is income. When in opposition, the Liberals denounced the practice of exempting family trusts; in power, the Liberals have been strangely quiet, only saying that the issue will be examined. My point is that what is "income" originates in the political realm and by that faces all of the influences of the dominant forces of society.

The Canadian Advisory Council on the Status of Women (CACSW) wonders why child support payments are taxed at all;[103] other unearned income, including inheritances and gifts, is not taxed. But, indeed, section 146(1)(c)(ii) verifies income from alimony/maintenance as outlined in section 56(1)(b) and (c) to be "*earned* income." The CACSW argues, as did Thibaudeau in her legal case, that alimony/maintenance is not "earned" but rather only money held and controlled --as if a trust account--for the benefit of the children. Custodial parents are as trustees administering monies for their children.

Imagine how income could be conceptualized. Income, or "what comes in", and "flows" might include less tangible things that come into one's life such as the good wishes behind a cake from a new neighbour, more time to spend with loved ones, acquired labour saving technology, or general progress towards a self-actualized life. This is not to argue for inclusion of such things as income and thereby subject to tax, but to show that those who name income have a specific understanding of value and an interest in what is named income.

With regard to ability-to-pay, one stated premise behind attributing income to the custodial parent is that the custodial parent is usually the parent to earn the lesser amount of the two parents. Therefore, the rate of taxation is lower (leaving, the rest of the argument goes, more money for the children at the heart of the issue.) The logic is, I believe, that if the rate is lower, the ability to pay will be greater. While the rate of taxation may be lower, nothing is made of the statistics which prove that on the whole the financial circumstances of women after divorce sink to desparate levels. The Canadian Advisory Council on the Status of Women states that "[s]ixty per cent of single-parent mothers are poor."[104] So who really has the ability to pay? Indeed, the current understanding of ability-to-pay is in and of itself a recognition of the manifestation of systemic inequality and discrimination faced by women by virtue of the fact that legislation is built around the disadvantaged experience of women. The legislation in the final analysis does not address the inequity, it only builds upon it.

Income splitting is a tax planning technique designed to shift income from a tax payer paying tax at a higher rate to another taxpayer in the family unit paying tax at a lower rate.[105] Income splitting is a concept not generally allowed in Canada, but it is allowed in some specific instances, as I have discussed earlier in the case of family trusts. Suzanne Thibaudeau in 1989 filed tax returns in her children's names which included child support income Ms. Thibaudeau collected on their behalf. By doing so, she was income splitting in the same way that those who claim family trusts do in order that the monies would be taxed a a lower rate. (In her case, the children had little or no other income.) In the case of the child support, income splitting with children is disallowed. But the concept of taxation which is specifically disallowed by our tax system-- income splitting--is in fact, in addition to the example of family trusts, exceptionally accepted in the case of alimony/maintenance payments. While Thibaudeau was not allowed to split income with her children, the custodial parent claiming the child support demonstrates a shift of income from a tax payer paying tax at a higher rate to another taxpayer paying tax at a lower rate. The CACSW asks, "[w]hy does an Act that specifically prevents income splitting during marriage actually provide for it when the marriage has ended?"[106] Partially answering its own question, the CACSW explains:

> In theory, [inclusion/deductability] should be advantageous to [women]: as the husband's marginal rate is usually higher than his wife's, the splitting of income between the spouses for tax purposes reduces their total tax burden. The tax saving thus effected is presumably passed on to the wife in the form of an increased amount for support. In practice, however, many women know that the tax saving was not taken into account when lawyers and judges set the level of their alimony and/or maintenance payments. Also, some lawyers admit that tax is not often considered in the bargaining process that establishes the alimony/ maintenance amounts. And one fact has been substantiated by numerous complaints: women who separate and/or divorce are very seldom adequately informed of the tax implications of these procedures.[107]

Because of the social production of meaning behind legislation, it is not entirely clear why alimony and maintenance payments are taxable as income in the hands of the recipient and deductible by the payer. The inclusion of maintenance payments (including child support) as taxable income on behalf of the recipient, and the deductability from the income of the payer, was first decided in 1942. Prior to that time, the payments were not included as taxable income and no deduction was allowed. The change in rule in 1942 was justified and subsequently legitimized through hegemonic discourse and the social production of meaning as providing "relief of husbands in certain income tax brackets who had not enough income to pay both their maintenance obligations and the high war-time tax."[108] However, after the war, the law was not repealed; and other justifications have since come into play. Since then, examples of rationalization include: deductability is an incentive promoting the enforcement of the separation/ divorce agreement or the court order to pay maintenance; deductability permits men who are financially strapped to start anew with a new family; and such tax treatment allows the payment of higher amounts to wives and children by reducing the total amount of tax the payor and his ex-family have to pay.[109]

Stability and certainty are concepts significant to the *Income Tax Act.* The government's basic function of legitimation is directed towards maintaining political consensus and stability, and controlling potential conflict.[110] The economic base of our nation, it is argued, demands stability and certainty. Yet, a tax structure that is seen to be demonstrably unfair could be a serious problem for legitimation.[111] Furthermore, stability and certainty work for the status quo and against change.

The official "tax-paying units" of the Canadian *Income Tax Act* include the individual and the corporation; however, the family unit is increasingly taken into consideration as well under the rubric of "concessions for the existence of spouses and children."[112] One example of such a family consideration is the child tax credit. Other erosions [examples] include transferrable benefits, the attribution rules, and the spousal exemption.[113] There is increasing political impetus on behalf of the governing party to switch from the individual unit to the family unit. In fact, both the Carter Commission on Taxation [1966] and the Royal Commission on the Status of Women [1970] recommended the implementation of an American-style joint taxation system in Canada. The Carter Commission recommended the joint taxation system based on the family unit, citing the belief that "the family is today, as it has been for many centuries, the basic economic unit in society."[114] The federal government at the time rejected the recommendation of the commission because ". . . the commission's proposed family tax unit would have imposed a 'tax on marriage' – that is, a husband and wife each having an income would together pay more tax than two people with the same incomes who were not married."[115]

The Royal Commission on the Status of Women (RCSW) argued in 1970 that the marriage unit was "a logical basis for taxing the income of a married couple" and recommended that the federal *Income Tax Act* be amended so that the husband and wife form a taxation unit and be permitted to aggregate their incomes with the option to file separately if they so desire. What underpinned the RCSW position, Louise Dulude explains, was its concern for the single "then-burning" issue of the non-deductability of salaries paid to people who worked with their spouses in unincorporated businesses and farms."[116]

The Canadian Advisory Council on the Status of Women expressed concern in 1977 about the family tax-paying unit:

> Despite [the reaffirmation of intention to retain the system of individual filing], use of the marital unit in the Canadian tax system seems to have increased in recent years. A number of important provisions assume a marital unit, including spousal tax exemption, the transfer of unused deductions between spouses, the attribution rules, the refundable tax credit, and the refundable sales tax credit.[117]

The CACSW feels that, should the family unit be adopted, advantages to women under the individual filing might be lost. Moreover, "[i]n practice, recognition of the marital unit has the effect of creating a tax bias for women against work in the market sector and in favour of work in the home."[118] That same year, the CACSW made a statement opposing "the introduction of joint taxation of the spouses in Canada because it would 'have the effect of reducing the independent financial security of married women who have personal sources of income'."[119]

The White Paper on the Personal Tax and Transfer Systems (1984), issued under a neo-conservative regime, states:

> When considering ability to pay, the ideal taxpaying unit is the basic economic unit of society, regarding consumption, saving, investment, or borrowing. Common sense, statistical evidence and numerous studies on the subject have shown that, in our society, this basic economic unit is generally the family.[120]

The ideology behind the party in power has much to do with both the understanding of the family and the justifications used in taxation. In addition, feminists cringe when we hear an appeal to common sense. Common sense relates to the status quo.

What ought to constitute a tax-paying unit is the subject of on-going debate. As recently as February of 1993, my local Member of Parliament, Scott Thorkelson (Conservative member for Edmonton South), sent out to his constituents a "YOU TELL ME . . . ." survey with fifteen questions on it. Number six reads:

> The government should create a Family Tax Return so that families are treated as economic units, rather than a collection of individuals.
>
> *Agree* *Disagree* *Don't Know*

The motivation behind this interest in tax reform is not entirely clear. Incorporating the family tax unit invokes income splitting which in turn reduces the overall taxes going into the federal coffers. On that basis alone, these days of fiscal "crisis" ought to work against changing the unit at this time to family units. Speculations and supporting evidence are beyond the scope of this paper.

Comparatively, and to place Canada's policy in a more global context, one finds that the individual is the tax-paying unit in Australia, Austria, Denmark, Finland, Greece, Italy, Japan, Netherlands, New Zealand, Sweden, and Turkey. The family is the tax-paying unit in Belgium, France, Germany, Ireland, Luxembourg, Norway, Portugal, Spain, Switzerland, United Kingdom, and United States. Until there is impetus for further analysis, such a comparison will have to remain at the descriptive level.

On a number of counts, equity does not seem to play a role in the decision of inclusion and deductability of income. As the members of the lobby group *Kids First* argue, the same tax benefit is not offered all parents who would claim such a deduction for expenditures in the normal course of childcare: money spent on children during the existence of the marriage is not deductible for fathers or taxable in the hands of mothers. Neither is equity a consideration in the case of the contributions made by the custodial parent after a divorce. The CACSW believes that "if the payments remain deductible for the payer, the recipient must be given equal or, in the case of an imposed maximum, a proportionately shared right to deduct expenditures made on behalf of the child."[121]

Generally, tax deductions (more tellingly called tax preferences previously) give the largest tax breaks to wealthier taxpayers, who have higher marginal tax rates because the benefits of a tax expenditure program are proportional to changes in tax rates.[122] Such situations are antithetical to the notion of progressivity in our tax act. Tax credits, on the other hand, give the same amount of relief to all taxpayers.[123] Despite the contradictions and the ambiguities, income tax is the fairest method of imposing tax. The CACSW argues that "income is the best measure of ability to pay and allows more flexibility so that a taxpayer's individual circumstances can be taken into account."124

Numerous implicit assumptions underlie the *Income Tax Act* . One among these is the notion of dependency -- a significant concern in any feminist analysis. While imagining prescriptions for the future, a feminist analyst would wish to negate the notion of dependency; however, in a contemporary descriptive picture, a feminist analyst would not want to see the pervasiveness of dependency brushed aside. To argue discrimination, the unequal starting points of women and men must be recognized.

Tax Policy Formulation, the Budget Process, and Tax Illusions:

The state and its budget-making process is instrumental in the development of tax policy. It is difficult to name a policy field that is more structured or institutionalized than is this policy field. Tax policy is state-centred, but profoundly influenced by business. During Prime Minister Brian Mulroney's Conservative tenure (the most recent government upon which I can comment, since the more recent Liberal government is so new), it was difficult to differentiate between the state and business in many policy fields including taxation; that is to say, between government and business there was a high degree of congruence in philosophy and a good degree of agreement. It is not clear yet if Jean Chretien's Liberal government will have such a degree of congruence although there are indicators that it may have even more so.

Interestingly, with the current Liberal government, the public's expectations for a greater shift to social concerns (for example, remedies for unemployment and the protection of the social safety net) have instead manifested differently in a February 1995 budget. One political commentator among many, Dalton Camp, has remarked of the budget that never in Canadian history had he heard a budget which seemed to speak not to the Canadian people but rather to the larger international business community. Budgets and taxation policy have not always been so consensual. Following this dramatic shift, one must wonder from where the government is receiving its mandate to govern: from the traditional source, the Canadian polity, or now from the international economic super-community who seem to have risen above the constraints of political and sovereign boundaries to exert power over all nations. But, it should not come as a surprise, given a government who has the international money markets dictating the products of the state-- government policy-- that such products would include only economic considerations and not include the publicly expected emphasis on social considerations. In this scenario, what success should we expect in regards to the removal of the taxation of child support even when the government has stated its commitment to the cause and even when it is among the recommendations of the taskforce commissioned by this government. One can speculate that given the squeeze related to international money lenders, this Liberal government under Jean Chretien is even more tightly beholden to economic or business forces than its predecessor, the Conservative government under Brian Mulroney. The socially constructed discourse surrounding the debt and deficit have made it more important for governments to appeal to the international economic powers than to the general polity.

The Department of Finance initiates the budget-making process (from whence tax policy arises) by publishing a general review and a forecast of the economy in its annual *Economic Review* : "detailed economic and financial analysis of household, business, and government sectors form the main body of the presentation . . . ."[125] Complaints that the Department of Finance had not consulted effectively with the private sector[126] led to a pre-budget consultation process whereby various individuals and groups submit discussion papers and consultative documents. Separate from, but perhaps in addition to the current confraternity of power,[127] Salyzyn suggests that since 1972 the government has taken a more "consultative" stance as part of its regular budget-making process. Since 1975, *Green Papers* on selected tax policy issues are used to invite the general public and tax experts to make submissions and offer suggestions. Furthermore, draft legislation with explanatory notes is published for public discussion, but frankly, few have knowledge of this process and of this information. As this process is laid out, it invites not consultation, but merely commentary--after the fact .

If the pre-budget stage is politically managed, the budget stage is even more so. Tales of budget secrecy are legion in this country. Nevertheless,

> [b]udget resolutions announced each year by the Minister of Finance propose the taxes for the year. They are by custom adopted and given the effect of law pending enactment of legislation implementing them. The applicable dates of the changes effected by the Budget announcements are

> included in the resolutions, some of which may become effective immediately or even retroactively.[128]

Some parties have called for the closure of any gap between the budget and implementing legislation--a gap which in the past has been seen to create uncertainty.[129] Women should be cautious about any tightening up of an already closed process-- such a tightening up would facilitate action by government (and business behind it) without much debate or opposition.

Regarding policy models and directions, it is illustrative to look to the American experience. There we are led by the political discourse of conservatives to believe that the North American story of budgeting begins with "classical" budgeting of "the good old days" as outlined in Aaron Wildavsky's piece,"The Dance of Dollars: Classical Budgeting." The very term "classical" implies the "epitome" or the "pinnacle" of budgeting activities. Wildavsky names several normative values similar to those named in other articles such as Charles Lindblom's, "The Science of 'Muddling Through'." Again, these values, which include stability, compromise, consensus, incrementalism, balance, minimal conflict, and "fair share", are all "motherhood" objectives supported by most when discussed in the abstract.

In Canada, as in the United States, the classical model was exclusionary to many. What followed classical budgeting was the hyper-pluralist example of budgeting made possible by the economic boom-times of post-war reconstruction complemented by the consciousness raising of the masses in the 1960's and 1970s. Interest groups played a larger role especially in the 1970s, making it necessary for the institutions of the classical budgeting era to adapt. More was expected of our political leaders and they responded accordingly. Nevertheless, hyper-pluralism ground to a halt in the mid-eighties owing to a change in ideological and economic circumstances.

Beyond classical and then welfare state hyper-pluralist budgets, the next stage has involved neo-conservatives (Prime Minister Brian Mulroney) and following shortly upon its heels, neo-liberals (Premier Ralph Klein of Alberta)-- both of the latter have involved top-down budget making, and a pseudo-impression that the public has input through, first, electoral mandate and, then, through ongoing "round-table consultation" more aptly called "commentary." The hegemonic discourse currently has it that "liberal politics in its later stages had lost the ability to judge claims, and so yielded to all of them."[130] In the end, however, the Mulroney government was unable to fight the public tide which was by then a curious blend of conservative and liberal ideologies. Using a medical analogy, neo-conservatism demanded a single-minded prescription for greater conservatism without any consideration of treating its addiction to liberal politics. Mulroney did not succeed at his task and his neo-conservative years culminated in an inability to maintain legitimacy, and therefore, to govern. The public, on the other hand, upset with the rapidity of change, upset with the unresponsiveness of the business oriented neo-conservatives to the average citizen, bombarded by a socially produced heightened awareness of fiscal matters, and addicted to the comforts of the welfare state, knows not where to place its confidence.

Following the neo-conservatives came the neo-liberals who challenge the role of the state in such matters, and lend their support and credence even further to the international money lenders. The neo-liberals, with their belief in "pull yourself up by the boot-straps" individualism, have gone on to reduce public social services. Drawing on the example of the United States (since the Canadian example seems to follow), Joseph White and Aaron Wildavsky, in their article, "Public Authority and the Public Interest: What the 1980s Budget Battles Tell us About the American State," asked in their first paragraph, "is there a government that can govern?"[131] White and Wildavsky explain that conservatives suggest that an excess of democracy is at play, and the pair cite conservative Richard Rose:

> [g]overnments become overloaded when expectations are in excess of national resources, the government institutions, and the impact that its outputs can achieve. Such overload arises from the decision of citizens individually and in organized groups to ask for more of government than it can provide.[132]

Using the conservative argument, a prediction is made: "Because people expected more than it could deliver, government would lose its legitimacy."[133]

White and Wildavsky discuss David Stockman's neo-conservative budget proposal to include "justice" (the ideologically and socially produced meaning of this word is ambiguous and results in paradox) rather than competing interests. We have learned from Gramsci, Maroney, and Stone that the social production of the meaning of "justice" leaves critical analysis paralyzed. Stockman, sounding squarely like the glory days conservative, is credited with saying that "special interest" pressures prevent politicans from pursuing the "public interest." Stockman's "justice" does not serve "special interest groups" but rather it serves an elite group within society. Justice becomes a privilege for the privileged. Stockman's rally for a return to classical times is folly. Yet, White and Wildavsky are on to something when they argue that any counter -hegemonic force must have conservative elements.[134] Such a force, however, must have liberal elements as well: the masses behind the special interest groups will not relinquish their rights/entitlements discourse based on their understanding of justice, nor will they relinquish their democratic voice. Each government-- protecting a fragile hegemony--can be seen as struggling for dominance, the right to hegemonic discourse, and enough legitimacy to govern.

As I argued earlier, a student of Canadian tax policy would do well to look south of the border with regard to the direction Canada might take. Stone explains that in the United States the method of policy analysis enjoying currency is based upon the "classic microeconomic model,"[135] a rational model wherein economic units of measurement are transplanted from economics to the political realm and respected as the only valid consideration. Canada has already signed up to follow this model with its endorsement of public choice theory.[136] Such an analysis, however, denies any political, sociological, psychological, cultural, philosophical or spiritual considerations at play. In the market model, human life is in a sense assigned a monetary value. But, politics has no standard units of measure. To transfer the standard units of economics --dollars and cents-- to another realm and make those units the exclusive consideration is frightening for humanists.

An example, this time from environmental policy, will show that in weighing cost and benefits, the monetary cost of updating factory equipment becomes the sole consideration in decision-making and subsequently the validated excuse for not proceeding with environmental upgrades. Overhead costs compared to the benefits (in projected sales) prohibit upgrades, that is to say, the costs outweigh the benefits. In this equation, however, there is no calculation of the philosophical or ethical considerations, the environmental costs of inaction, or the health and social costs to workers or surrounding residents. To take the economic market model further and to parallel and complement one of Stone's folksy analogies, I suggest that while one might recognize that flour is the most important ingredient of a cake, one would not expect good results if one failed to consider the eggs and the butter, not to mention the chocolate. Subscribers to the economic market model with their imprisoned political thinking assign greatest value to economic considerations at the expense of other considerations which ought to lend richness and depth to social life. The economic model is too narrowly focused. Its assumptions are dangerously misleading by their omission of other important factors. Yet, normatively, the model indicates that hegemonic discourse has persuaded political and civil society that economics really count.

In the Canadian example, there is truth to Vladmir Salyzyn's assertion in *Canadian Income Tax Policy: An Economic Evaluation* that "structural tax policy is usually implemented in a piecemeal fashion rather than by complete redesign."[137] Incremental changes, as critics of Charles Lindblom's theory of incrementalism have suggested, buttress the established order, do not work well to address new problems, lack innovation, and do not address "optimal" (tax) design. Some argue that in tax policy the need for stability is paramount.[138] Incrementalism bodes poorly for any chance of radical change, the type of change feminists would prescribe.

When pressure for meaningful reform (beyond incremental change) must be managed, Royal Commissions, task forces, and standing committees are struck. Although commissions on the state of the economy are as important to tax policy, my focus in this paper is on the Royal Commission on Taxation, the Carter Commission of 1966. I justify my decision to focus thus partly by "first things first" and partly because of the commission's focus on equity. I am especially interested to determine how it was that the commission's focus on equity-- juxtaposed with the demands of business-- was politically managed. When legislation enacting the restructured tax system arising out of the Carter Commission was presented in the House, E.J. Benson, the Minister of Finance stated, "a tax system must distribute the tax burden in an equitable manner, based upon ability to pay. Furthermore, it must not only be fair; it must be seen to be fair."[139] Yet equity appears to be a hollow promise, largely within the realm of symbolic politics.

By and large the public consultation with the Carter commission was highly unequal. There were over a thousand submissions, but the great majority of the major submissions came from the corporate sector. The commission heard from leading corporate executives, lawyers, accountants and tax experts.[140] In addition to individual submissions of corporations, specific sectors, stock exchanges, boards of trade of major cities, and business organizations like the Retail Council of Canada, the Canadian Manufacturer's Association, and the Canadian Chamber of Commerce made presentations.[141]

The products of the commission's proceedings enjoyed extensive debate in the business press.[142] Threats of capital flight were not uncommon.[143] Widely reported in the press were the comments of Mr. W.M. Anderson, then-president of the Canadian Chamber of Commerce, who stated that "in its efforts to distribute income more equitably, [the report] pushes aside the privacy of property which has always been considered one of the qualities of Canadian society.[144] Yet, Robert Gardner concludes that the final legislation was the culmination of a long process of consistent government retreat.[145] "Equity continued to be officially acknowledged as a central feature of an optimum tax structure, but in practice economic growth was to be the highest priority of the reformulated system."[146] The balancing of political forces issued constraints and pressures on the state.[147] Gardner argues that in the end political realities-- the influence of capital accumulation (business) and the influence of the New Democratic Party (N.D.P.) in electoral politics-- dictated the state.[148] Neither the economic forces nor the equity forces claimed victory, however, given the perception of lobbying as a zero-sum game. Yet, no-one would deny the influence of business then, and even more so now.

Today, the formulation of tax policy has been further "captured" by business owing to the congruence of interests between the neo-conservative regimes, the neo-liberal regimes, and the business community. This does not preclude politics however. Salyzyn, who along with most tax analysts subscribes to the "public choice" theory of public administration and policy, gives an account of the political factors behind the making of tax policy today. He explains:

> [s]ince no one really wants to make [tax] payments, governments can expect opposition to the taxes they impose. The strategem is to model tax reforms that bestow benefits to at least some marginal voters while imposing the costs on infra-marginal voters.[149]

Marginal voters are those who are likely to switch allegiance to the party in power. Infra-marginal voters are those who are unlikely to reduce support for the party in power because they are either too strongly committed to the party or because they are already so alienated against it that they would never consider voting for the governing party to begin with.

I believe that political management is, first and foremost, about the social construction of the electorate's "reality." The electorate is enticed to collude with the state in many ways, including the state's use of "tax illusions," which are as Salyzyn sets out in his book.

> [A] set of illusions that keeps the political costs of taxes down is the role played by refunds, deductions, and tax credits in the income tax system.[150]

To show the depth to which manipulation and illusions occur, I give you another example from Salyzyn's book:

> In a typical year about three-quarters of all taxpayers become entitled to repayments on their personal taxes because the government had previously taken money which rightfully belonged to the taxpayers. These repayments reach up to one-quarter of the total amount ultimately collected. Nonetheless, taxpayers are usually happy to receive such "refunds", even though, in effect, they initially made interest-free loans to the government in order to be entitled to them.[151]

As we saw with the Carter Commission, issues of equity, even in more "equity-friendly" times, were and continue to be politically managed. The more "equity-friendly" party in the 1960s and 1970s, the New Democratic Party, has moved since then into the political centre, and then into obscurity. Nevertheless, insofar as political parties (themselves implicated as culprits in the division of women's interests) can fight the construction based in the hegemonic discourse, the New Democratic Party until last election (1994) was the most helpful. In the matter of the taxation of child support, N.D.P. Member of Parliament, Dawn Black, carried the banner for gender policy and taxation at the federal level, and N.D.P. Member of the Legislative Assembly of Alberta, Marie Laing, had shown real concern at the provincial level. Yet, given the movement of the New Democrats towards centre, their low popular support today at the federal level, and their declining popular support in the provinces where they hold power, their influence is not enough to facilitate real change. With whomever takes up the collectivist expression in Canada, feminists must build alliances.

With the reduction of the New Democrats in government, there has been on the other hand, a striking showing (nineteen percent of the popular vote)[152] of a right wing party, the Reform Party of Canada led by Preston Manning. The timing between the social construction of meaning surrounding the debt and deficit combined with the rise of a party with a publicly displayed distaste for Canada's social safety net and other "special interests" has given this party the opportunity to place itself at the heart of a tax revolt. With Manning's cry for no more tax increases, his party stands decidedly on the side of the advantaged. In other words, his goals are fiscal ones, social goals are not his concern. "Fairness" is still his rallying cry, but in this case it means like treatment with no special considerations. This is definitely a party to watch if their current popularity continues beyond a second mandate. I think it is safe to say that the voice of feminism is counted among members of the Reform Party of Canada as a "special interest" to be eliminated.

The Liberal Party must be credited at this time with at least making the symbolic gestures of accepting the taxation of child support onto the political agenda. Liberal Member of Parliament for Nepean, Ms. Beryl Gaffney, has presented a motion into the House for agreement in principle, and a taskforce, in the true Canadian way, has been commissioned to study the matter further. Justice Minister Allen Rock has promised reform favouring the removal of the deduction and extending a tax credit (preference) to the custodial parent. But on the other hand, the same government in which Rock serves as Justice Minister has asked that the ruling of the Federal Court of Appeal in which Suzanne Thibaudeau won her case against discrimination be suspended rather than have any force in law until the Supreme Court can hear the matter. One hand is promising reform, and the other hand is delaying it citing as its reason the desire to legislate change rather than to default to it via the judical system.

In 1994, Liberal Member of Parliament, Beryl Gaffney, presented a motion before the House of Commons which called for the *Income Tax Act* to be amended so that child support payments are no longer considered taxable income for their recipients. This motion was passed on May 30, 1994 without a recorded vote, (the speaker heard no "nays" when the vote was called) resulting in agreement in principle. While it has no effect under current law, the debate and consensus is expected to influence the Minister of Finance, "who is eager to incorporate the views of the House into the decision-making process," according to Liberal Member of Parliament, Anne McLellan.[153] Ms. McLellan reiterated her government's commitment to reform the child support payment system which includes introducing reforms to the tax system. While she states that her greatest concern is to ensure that Canadian children receive the best possible care and protection because their welfare must be [the government's] top priority, she does not outline along what lines this revamping will take place. As we have seen in the past, lipservice proves effective to diffuse issues, and furthermore, such motherhood statements via the social production of meaning can be used to justify undesirable and even contradictory policy directions. The position of the House was made known to the federal taskforce led by Sheila Finestone.

A phone call to Ms. Gaffney's office (March 6, 1995) revealed that her motivation for bringing this issue before the House was from meeting with single parents who brought the matter to her attention. When I asked if the single parents who brought it to her attention were affiliated with an organization (for example: SCOPE), the reply was in the negative, rather the parents were parents she met singly as she went door-to-door campaigning. Refreshingly, and to Ms. Gaffney's credit, it was explained to me that this is not just a matter of taxation and budgets, but that this was bigger than that: this was a matter of justice. Sadly, since my telephone conversation to her office, Ms. Gaffney has had to step aside from her legislative duties following the diagnosis of a brain tumor.

The Canadian Advisory Council on the Status of Women was not yet formed at the time of the Carter Commission, but they have made presentations to more recent commissions and committees. Largely, such consultation has been futile because the process of tax policy formulation is closed, top-down, and secretive. In the specific case of the taxation of child-support, the fight for fairness (which will benefit a small tax base, namely a few women who are not normally instrumental in the taxation policy process, to the detriment of many men who are actors in the policy process) faces hurdles, to say the least. The chances for recourse through the budget process are not hopeful, and even if women could penetrate the process via conventional politics addressing systemic discrimination in any profound way may be beyond the realm of the state.

The Rationale for Reform: The Feminization of Poverty:

As I mentioned at the outset of my thesis, tax policy is not readily identified as a "women's issue." To support further that it is, and using Virginia Sapiro's typologies, we can see that it is indeed a women's issue. First--in scope--some tax policy (for example, tax policy regarding "child support" payments) relates to "public concerns that impinge primarily on the private (especially domestic) sphere of social life and particularly those values associated with children and nurturance." Second-- in domain--some demands for tax policy reforms relate to an area where "women have a 'special' interest or a particular viewpoint from which their positions or preferences might be derived"--often arising from general 'parochial' domestic position and concerns. Yet women's consciousness has not been raised to the level where subsequent large scale activism places tax policy at the *top* of the feminist agenda; and as Sapiro suggests, "political systems are not likely to represent previously unrepresented groups until those groups develop a sense of their own interests and place demands upon the system." 154 I suspect that the articulation of women's interests regarding tax issues is diffused partly because tax issues are generally conceptualized along *class* lines rather than along *gender* lines.

Given the economic and institutional frameworks operative in most considerations of tax reform, how can we relate taxes to equality and social justice, and thereby provide the rationale for the study of equality and tax policy? The Carter Commission stated in 1966, as have successive governments, that in tax policy, equity must be given highest priority. Equity in tax terms has two streams of meanings: horizontal and vertical. Horizontal equity requires that those in like circumstances be treated equally. Vertical equity requires that those in differing circumstances be treated appropriately according to those differences. The latter provides the justification for progressive taxation (differential rates of taxation as income increases). The notion of progressivity underpins our Canadian understanding of "ability-to-pay" -- a recognition that some people in society are more easily able to contribute than others. Central to the concept of ability-to-pay is the recognition "that the distribution of wealth prior to tax is unequal and that this should be reflected in taxation provisions."[155] Ability-to-pay is correlated with the fact, borne out in statistics and in women's experience, that the earnings of men are substantially greater than those of women. "The fact that the great majority of maintenance orders are payable by the male spouse to the female spouse is a reflection not only of the custom of assigning custody of children to mothers but also of an occupational structure in which the average earnings of men are greater than those of women." [156] Indeed women have been awarded custody of the children in eighty-five percent of the cases of divorces involving children.[157] Support orders, according to political discourse, are based on ability-to-pay and need.

The Canadian Advisory Council on the Status of Women (CACSW) states that the *Income Tax Act*

> has a differential impact on women because of their social and economic position in society. It influences women's level of disposable income and financial independence, and thus their ability to care for their children, their access to day care, and the choices they make about working outside or inside the home. The tax system must change in order to accord women the same advantages and financial security enjoyed by men.[158]

The 1966 Royal Commission on Taxation advocated as the tax system's principal objective "[the allocation of] taxes among tax units in proportion to each unit's ability to pay."[159]

Tax policy, as it pertains to divorce, further contributes to the poverty brought about by divorce. An American study (1985) about divorce, cited in a Canadian sociology textbook, found that

> when income is compared to needs, men experience on average a 42 percent increase in their standard of living, while divorced women with

> custody of their children experience a 73 percent decline. The reason for these unequal outcomes is that men are generally required to pay about one-third of their net income for spousal and child support whereas women and their children require about three quarters of that income to maintain the same standard of living. [160]

Research by the Department of Justice shows that ten percent of the men (without custody) paying child support[161] are put below the poverty line. By contrast, fifty-eight percent of women (with custody) --even after considering employment income, support payments, and other income --were placed considerably below the poverty line.[162] Moreover, figures from 1976 show that seventy-five percent of husbands are in default on their court ordered support payments.[163] Divorce, therefore, has become one of the leading causes of the feminization of poverty.[164] Child support awards typically amount to less than half of the minimal cost of bringing up a child (*not* including the cost of child care). The manner in which maintenance is taxed contributes further to the feminization of poverty.

As tax policy stands now, when a man and a woman with children separate or divorce, and when the absent parent is ordered by the court to pay child support (for the maintenance of the dependent children) to the custodial parent, the absent parent claims a tax deduction for the amount of the child support. This tax deduction is seen as an incentive to motivate men to pay their support. On the other hand, the custodial parent must claim the child support as *income* (and as such, the child support monies are taxable). One problem, among many, is the fact that the amount stipulated by the courts as child support is the amount *necessary for the maintenance of the children* (and this amount did not until very recently include tax considerations). Any tax taken off that amount leaves a shortfall in meeting the day to day needs of the children. Another problem is that the custodial parent-- who must claim the child support as income -- is left with the tax burden on all of the monies relating to the care of the children. She pays the tax on the monies she earns and spends on her children, and she pays the tax on the money the father earns and contributes to the maintenance of the children. In the end, the well-being of the children is jeopardized. It is the feminization of poverty and its effects on children that motivate women to challenge this tax law.

Women and children are undervalued in our culture. It is not surprising to hear

Vladimir Salyzyn, a tax "expert", state that tax policy is antithetical in some cases to social goals regarding children and families. Add, as another supporting document for the fight for better tax treatment of child support, the fact that in Canada there is statutory recognition that:

> i) [i]n matters of custody and control of children (embodied in the *Child Welfare* acts):
>
> > *The court shall give first consideration to the welfare of the child;*
>
> ii) [i]n matters of maintaining the family as a unit (parent and dependent children) (expression found in *Family Relations* or *Family Services* acts):
>
> > *In the administration and interpretation of this Act the best interests of the child shall be the paramount consideration.* [165]

Conclusion: A Process Without Women

In conclusion, there are several factors at play which lock women out of policy making in this policy field. The public realm of business is still considered the exclusive domain of men. Women's exclusion as policy makers and their treatment as policy takers is affected by history and structures which suggest an immutability to the way things are. The process by which tax policy is made is closed to women and indeed to many groups without business or political connections. The language taken from the legislation is ambiguous. The discourse surrounding the issue-- from original intent to current day justifications-- is elusive because it sways with the social production of meaning and constructed realities. Royal Commissions, taskforces, political parties, and individuals have shown some initiative to put the issue onto the political agenda, but the results have not moved beyond symbolic politics yet. In the meantime, women and children sink further into poverty.

CHAPTER THREE

FEMINIST ACTIONS

Over the years, policy making in the area of tax policy has been a closed process in which, generally, women have played a small part compared to men. This is not to say that women have been uninterested or have not worked for political changes that would address their concerns. Contrarily, women, as mere takers of tax policy, have sought explanations regarding their treatment under the *Income Tax Act* . Having found no satisfactory explanations, women have attempted, through conventional and unconventional political engagement, to enter the policy making process which has by way of hegemonic power been successful in shutting women out. In response to their relative lack of influence in policy that directly affects their lives and the lives of the their children, women have organized to make change. This chapter presents illustrative examples of various feminist actions against current tax policy in Canada. The wide range of feminist activity includes at its extremes collective action on many fronts and individual action on single issues.

Out of frustration, creativity in political activity flows in some unconventional instances with varying degrees of success. On the other hand, creativity appears curbed through the conventional use of political and judicial institutions which by their high degrees of organization and rigid natures tend to maintain the status quo. Nevertheless, the latter approach has yielded some successes for women as well. Jill Bystydzienski has at the heart of her theory of women's political representation the concept of a "critical mass," that has women wielding more influence in policy formulation once they have achieved fifteen percent of the seats in legislatures. Across Canada, women's bureaucratic structures, such as advisory councils, related at arm's length to governments play an important role. As a matter of due course, the Canadian Advisory Council on the Status of Women has had the job of analysing policy and reporting back to the policy makers as to its effects on women. Umbrella groups, like the National Action Committee on the Status of Women (NAC) continue to bring equality issues to the political arena. Grassroots organizations must be lauded for their undying enthusiasm despite all odds. Finally, by presenting three very specific Canadian legal decisions, *Suzanne Thibaudeau v. Her Majesty the Queen (1992);* the subsequent appeal of that case; and *Brenda Schaff v. Her Majesty the Queen (1993),* I will examine the current status of the inclusion/deduction system of tax policy as discriminatory against women.

Women's Institutional Representation :

After examining the matter of women's representation in political institutions, Chantal Maille, who subsequently wrote *Primed For Power: Women In Canadian Politics* for the Canadian Advisory Council on the Status of Women, reasons that women have a better chance of changing institutions from within than from without. In other words, Maille supports political engagement rather than political disengagement. "Liberal feminists retain some ideological commitment to the view that political decisions are made within the formal political process - that politics is what takes place in the public sphere."[166] Not all feminists concur with such liberal feminist activity, but we should be reminded of Susan Harding's argument for a feminist method that includes traditional reform.

Since income tax policy originates in the federal arena, it is useful to consider women's representation there.

Table 1

Women Members of Parliament (MPs) in General Elections, 1968-199

(expressed as percentage of total)

Year	MPs
1968	0.4
1972	1.8
1974	3.4
1979	3.6
1980	5.0
1984	9.6
1988	13.4*
1993	17.9

* Reform Party MP Deborah Grey was elected in a 1989 by-election, bringing the number of female MPs to 40 (14 percent).

(adapted from Dr. Linda Trimble's, "Becoming Full Citizens: Women and Politics in Canada"[167])

In 1993, women's representation in the House of Commons surpassed Bystydzienski's critical mass figure of fifteen percent by 2.9 percent. More encouraging is the fact that the percentage of women in the federal institution is growing steadily. On the other hand, feminists are cognisant of the fact that some of the women elected to the House more recently are members of the Reform Party of Canada who do not share a feminist perspective. Therefore, for a feminist perspective to become salient in the House, it will take more than just electing more women. Elected women must have a consciousness of the female constituency; numerical representation must translate into substantive representation.

Representation of women in the provincial/territorial arenas has not been so consistent in its growth. The numbers of women sitting in legislatures fluctuates up and down election to election. Currently, nine legislatures have reached Bystydsienski's critical mass. They are in descending order: British Columbia (25.3 percent); Prince Edward Island (21.9 percent); Ontario (21 percent); Manitoba (19.3 percent); Alberta (19.3 percent); Quebec (18.4 percent); Saskatchewan (18.2 percent); Yukon (17.6 percent); and New Brunswick (17.2 percent).[168]

There has not been sufficient analysis to determine if critical mass of fifteen percent in these cases has made a difference. Conclusions reached about critical mass should not discount other factors perhaps at play such as party politics or "politics of scarce resources." Maille reminds us too that in addition to looking at women's representation in the legislatures, we must also look at the number of women as Premiers; as Opposition leaders; in Cabinet; in municipal offices; and appointed to boards, agencies, commissions, crown corporations, senior public service, and band councils.[169]

That women have had little impact on tax policy may simply be owing to the fact that they have not yet benefitted from their exercise of political power stemming from critical mass in the federal arena (the primary arena for tax policy.) However, many feminists, skeptical of Bystydsienski's hypothesis, believe that such a concept as critical mass would need to be much higher than fifteen percent, and some have amended the figure of critical mass to twenty or thirty percent. Nevertheless, as women with a feminist objective move into state institutions and into the upper echelons of public positions, the products of the state will no doubt be changed so as to reflect that perspective to a greater degree. On the other hand, other factors beyond a critical mass based on gender are also at work in policy making, including influential strongholds, cultural (values), economic, and international contexts.

In comparing women's representation in legislatures in Canada to that of other countries, Canada is seen, at the same time, in a favourable light and in a not so favourable light. Compared, as we usually are, to the United States and to Britain, Canada shows greater gains. (Given that our government follows the American and British model in taxation, does this mean Canadian women will lose ground?) Compared to the Scandinavian countries (especially Norway), Canada would seem to have a long way to go. According to any model of a "fifty-two percent ideal," all of the nations of the world have much work to be done.

Nonetheless, there is evidence of attempts to put the unfair taxation of child support onto the federal legislative agenda and not only from members of the opposition. Whether this is the result of critical mass at work or as a result of an individual initiative can only be a matter for speculation. When Member of Parliament Beryl Gaffney spoke in support of the motion she had brought before the House which states: ". . . in the opinion of this House, the government should amend the *Income Tax Act* so that child support payments are no longer considered taxable income for their recipients,"[170] she cited the *Income Tax Act* as discriminatory against women because it places an unfair tax burden on the custodial parent, usually the mother. Gaffney supports her motion by acknowledging many changes in Canadian society, which I paraphrase in my list below:

> 1. Demographic changes in Canadian society which see many more lone-parent families whose prognosis indicates long-term inadequacy in income. Fewer extended family and community supports have made the 1942 policy outdated;
>
> 2. Social changes including the disadvantage to women because of violence against women, vulnerability at time of negotiating divorce and settlements, and feminization of poverty;
>
> 3. Policy changes resulting in decreasing support for families with children including reductions in tax deductions and credits have

> negatively impacted on women and children;
>
> 4. Economic changes owing to a significant number of women participating in the labour force (at the low end of the wage scale) which delivers inadequate dollars to the family for their basic support.[171]

Assessing the success of the 1942 policy, Gaffney wondered aloud if the original objective of the policy (alleviating tax burden and encouraging the payment of child support) is being met or if it ever was met. In light of the very high rate of non-compliance with court awarded child support payments (as previously stated, seventy - five percent of men are in default), certainly the latter objective is not being met satisfactorily. Most important in Gaffney's speech, however, was her verbalisation of the fact that while the courts have at different times asked family law courts to resolve this issue by grossing-up the child support payments to include the tax implications, there is not the legislation either through the *Income Tax Act* or through Family Law legislation that ensures that this will be the case.[172]

After defending her motion using an argument citing discrimination based on gender, Gaffney concluded her speech with the declaration that this is not merely a tax issue but an issue of "wider social injustice."[173] Finally, she supplemented her original argument with an appeal that reiterates Canada's commitment under article two of the United Nations Declaration on the Rights of the Child which states that

> [t]he child shall enjoy special protection and shall be given opportunities and facilities, by law and other means, to enable him or her to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interest of the child shall be the paramount consideration.[174]

Whether Gaffney spoke as a feminist or merely as a liberal here is difficult to ascertain: naming the platform may make interesting musings but is a moot point if successes are judged by policy outcomes. Since women are undervalued and defined as a "special interest group" by many at this time, it makes sense strategically to make this gain for women and children by appeal to the still apparent concern for children who are not yet considered an interest group. Our governments can still be publicly embarrassed--it matters not at what level of government: local, provincial, national or international--by their ill-treatment of innocent children. Yet, as my next example will show, governments deflect criticism where possible.

Away from the national arena to the legislative assemblies of the provinces, women have attempted to bring the unfairness of certain tax treatments to the attention of other governing members, and indirectly to the media. For example, and for the record, Marie Laing, former Member of the Legislative Assembly of Alberta, spoke in 1993 to the issue of the taxation of child support calling for the Minister of Justice of the Conservative government of the time to lobby his federal colleagues to change this unfair tax law. It was a request immediately discounted by Justice Minister Dick Fowler who reasoned that the matter "is purely federal tax legislation, and the degree of success that we would have in lobbying for any changes in that, I think, would be rather small."[175] In a "motherhood" statement, he continued, "[i]n today's difficult economic world there is no doubt in the world that single mothers raising children are in a difficult economic situation."[176] This for Mr. Fowler was the end of the story, showing no recognition of the fact that at one time the provinces had lobbied for the deduction/inclusion system of child support, and showing, too, no political willingness to fight for the children who are in difficult economic situations. The pseudo-argument of institutional barriers based on jurisdiction closed debate before it even was started.

Feminist Organization and the State

It is largely recognised that Canada has had two "waves" of feminist activity. The first wave began in the latter half of the last century. To appreciate the long history of feminist organization in Canada, consider the National Council of Women which was established in 1893. The "hiatus" between waves should not be interpreted as an absence of feminist activity. Rather, the hiatus should be understood in light of other events such as the Great Depression, the Second World War, and post-war reconstruction wherein, respectively: the energy of feminists was elsewhere directed; women--by state design and political will--enjoyed tremendous gains in the workplace; and the voices of feminism were politically managed through the social production of meaning after the war efforts. More appropriate to our discussion of feminist action with regard to tax issues is the second wave of activity which began to swell in the late1960s and the early 1970s. Thirty years ago, women's groups were generally state directed; since that time, they have evolved into a pressure pluralism model.[177] Two key events which nicely reflect these two orientations-- first, state direction, and second, pressure pluralism-- are as follows: first, in 1970, the government published the *Status Report of the Royal Commission on the Status of Women* ; and second, in 1979 to 1982, women who organized for the cause struggled to gain equality rights in the Canadian constitution-- in the "taking of twenty eight."

In Canada today, women's groups are fragmented, diverse in their goals, and organisationally weak.[178] Yet, on many matters, there is co-operation, collaboration, and solidarity. Since 1972, the National Action Committee on the Status of Women (NAC) has attempted to act as the umbrella organization for over five hundred women's groups with varying degrees of success. Largely, the "public face" of feminism in Canada is the liberal or reformist perspective. But one should note that the emergence of anti-feminist groups across Canada, while seeming to fight special interests, has in reality created a new voice thus reflecting to some degree increased pluralism.[179] The anti-feminist understanding of the family unit could play a role in the direction of tax policy especially with regard to who claims/deducts child support and what constitutes a tax -paying unit.

For feminists, government funding is at one and the same time a blessing and a curse. Be that as it may, government funding is a key component of what fuels the Canadian women's movement. To illustrate some of the problems surrounding government funding, I give you three examples of controversial funding concerns and compromises:

> 1) A reliance on government funding is sometimes cited as compromising the objectives of women's groups;
>
> 2) Government agendas must be critiqued according to their funding or more likely, their lack of funding for programmes and policies for women (for example, different messages are sent when governments fund family allowance benefits instead of pay equity legislation, or when they fund poster campaigns regarding family violence instead of providing operational money for rape crisis centres); and

> 3) Anti-feminists now split scarce resources further when they argue for their "fair share" of federal funding.

Accusations aside, government funding is currently evaporating under fiscal conservatism and neo-liberalism. This process deserves the full attention of feminists since government funding has been at least partially responsible for the many gains of the Canadian women's movement.

Bureaucratic Councils at Arm's Length:

The most important and far reaching bureaucratic council in Canada has been the Canadian Advisory Council on the Status of Women (CACSW) which was established in 1973 and was disbanded as this piece was written, in early 1995. Their mandate was, first, to bring before the government and the public matters of interest and concern to women and, second, to advise the Minister on such matters relating to the status of women as the Minister may refer to the Council for its consideration or as the Council may deem appropriate. [180] The structure of organizations is often key to effectiveness, so, here, the structure of CACSW warrants consideration. According to an annual report, the CACSW had a maximum of thirty members appointed by the federal Cabinet through Orders-in-Council. Twenty-seven were part-time workers appointed for three year terms. In this pool, regional, cultural, occupational, and ethnic diversity, in addition to two official languages were represented. There were three full-time members including the president appointed for a five year term and two vice-presidents appointed for three year terms. The role of the CACSW was

> to represent as fully as possible the concerns, values, and aspirations of all women of Canada. Council members ensur[ed] a continuing liaison with women's organizations and non-affiliated women in their provinces or territories, maintain[ed] the CACSW research agenda, and formulat[ed] and adopt[ed] Council recommendations on a wide range of issues aimed at improving the status of women. As an agency operating at arm's length from the government, the Council report[ed] to Parliament through the Minister Responsible for the Status of Women, thus allowing the Council to maintain a voice within Parliament while retaining its right to publish without ministerial consent.[181]

A tall order indeed, and one the Council took seriously. With a budget appropriation of approximately 3.5 million dollars in 1993-1994,[182] the Council's products included presentations, meetings, speeches, briefs, conferences, and reports. The CACSW had written and presented a number of position papers in the area of taxation (1976, 1977, 1978, and three in 1987 relating to the "Standing Committee on Finance and Economic Affairs"). Unfortunately, evidence abounds that, like the recommendations of the Royal Commission on the Status of Women, the recommendations of the CACSW to government have been unheeded. Despite their stated function of liaison with government, the greatest value in the CACSW has been their function of consciousness-raising by way of research and reports.

On April 1st, 1995, the Canadian Advisory Council on the Status of Women, along with the Women's Programme, was integrated with Status of Women Canada, whose mandate is to promote research and communication services; to provide a more direct link with women's organizations; and to focus government efforts on promoting equality. The person at the other end of my telephone link had just moved from the CACSW to the Status of Women so I queried her as to any perceived differences between the two entities. She had moved from the distribution department at the Council to the similar department in Status of Women. The Status of Women, she remarked, had far fewer books for distribution than did the Council. I asked if the books and material would be transferred once the Council had wound down in June of 1995, but she replied that, no, the Status of Women did not want any of them. So we have the best asset of the Council not transferred to their new incarnation. How the new structure fares in serving the experiential needs of women remains to be seen. Budget appropriations will partly determine the story.

In contrast to the good work previously done at the federal level, the work done by the Alberta Advisory Council on Women's Issues has not been nearly so significant. For the past many years, the Alberta Advisory Council on Women's Issues (AACWI) has had (because of "budget constraints") to prioritize women's issues. In recent years, their practice has been to publish about two position papers a year (depending on costs and budgets) exploring issues that AACWI deems "critical" – for example, in 1993, their focus was on "Supports for Independence" and Maintenance Enforcement." The latter paper was never finished due to difficulties in obtaining information. The person with whom I spoke acknowledged that tax policy (especially child-support taxation) is not unrelated to maintenance enforcement (it is ofttimes publicly stated that the tax benefits to estranged spouses help "to persuade" them to pay child maintnenance). Since then, two other papers have been completed: one a re-write of an earlier employment equity paper and another on the economic situation of women over fifty-five, present and projected.

My contacts at AACWI have not been able to hide the exasperation in their voices stemming partly from the fact that since the change of leadership in the Alberta government in December of 1992, the very existence of the Alberta Advisory Council on Women's Issues has been threatened. Indeed recently a "sunset clause" has been invoked for December 31, 1996. In addition, budgets for AACWI have been low; the 1995 budget was only $271,000. The Edmonton Journal sums up the forces working against AACWI in an editorial describing: a reluctant mandate seemingly granted only because eight of the other provinces had already done so; a lack of legal autonomy and of research funding; internal bickering; a tiny budget; and patronage appointments.[183] Leadership in any organization is important: Margaret Leahey, the first director, and her successor, Elva Merrick were ready to criticize the government "openly, accurately and regularly."[184] However, the subsequent replacement, Catherine Arthur (in an acting chair capacity) was much more in line with government direction. At times the Council has had only a chair and no council members, or council members and no chair, today under the direction of Marilyn Fleger, it has a chair and full council– little consolation as the council limps into its sunset years. Unlike the Canadian Advisory Council, which was rolled over into Status of Women Canada, there is no re-incarnation planned for the Alberta Council. But as one of its last duties, the Council has hired consultants[185] to determine how the women of Alberta want their voices heard in the future.

Against these odds, the AACWI has contributed successfully to the advancement of women's causes. In the matter of tax policy the Alberta Council was active insofar as its structural and budgetary constraints would allow. Following the announcement that the 1994 federal taskforce commissioned to gather input on the taxation of child support (the Finestone Commission) would not be stopping in Alberta, the AACWI reacted in order to have feedback from Alberta women heard at any rate. For ten days in June of 1994, the Alberta Council collected ideas and opinions and compiled them as discussion points for submission to the commission.[186]

The collective response revealed some prominent themes:[187] child support should not be taxed; children were suffering as a result of the tax; and the tax causes considerable burden on the custodial parent who suffers from a fundamental lack of money. Further concerns were for both policy and process as well. There was a generalized disbelief that deductability of child support provides an incentive to pay for the non-custodial parent as is espoused as an objective of the specific policy. As to the effectiveness of the policy, Alberta women overwhelmingly believed that the deduction/inclusion system ". . . [kept] single parent families in poverty."[188] Knowing their own experiences during divorce proceedings, the respondents explained that women often find themselves unable to fund adequate legal advice, and even when they do, women find the lawyers and then the judges do not understand the economic realities of custodial parenting. Thus, legal advice does not reflect the experiential realities of women. For example, often child support settlements do not reflect the normal cost-of-living adjustments related at the macro-level to inflationary situations, not to mention at the micro-level, the fact that children eat more as teenagers than they do as babies.

The single most overriding theme according to the compilation for the Finestone Commission, however, was that the recipient should not have to pay taxes on child support. Alternative tax options were offered and they included child support changing hands between parents without tax treatment; taxing only a portion of the support; and the tax burden being shared by parents.

Grassroots organizations:

In addition to the bureaucratic arms of the government, a serious student of political activity must consider grassroots organizations. Grassroots organizations can vary greatly in size, in scope (from local to national), in organization (from loosely knit to more tightly knit), and in purpose (from concerns for a single-issue to concerns for many issues). Regardless of the structural attributes, the concerns, issues, and ideas originate from the women themselves--the grassroots. In their activity, grassroots groups may follow conventional or unconventional strategies, but it is in the grassroots rather than in top-down organizations that unconventional activity finds its likeliest venue. One such grassroots organization is the local group, People Against Child-Support Taxation (PACT), formed in Alberta in May of 1992 by Barb Smith and Karen Goodman-Price. The formation of the group came after an appeal by a Quebec woman, Suzanne Thibaudeau, for others to join her fight against the federal government which she argued, in the case of the federal *Income Tax Act*, discriminates against women.

> I am convinced that the amount of child support payments I receive are neither *my* income nor *my* salary, but rather are the financial obligation of a father towards his children. Fathers are rewarded by fiscal advantages; they can deduct the child support payments entirely to entice them to respect their obligation. Why should we women, in addition to having custody of the children, pay the father's income tax?[189]

Thibaudeau's frustration stirred other women in similar circumstances to found PACT. Similar grassroots organizations with an interest in the effects of divorce on women have been established in other provinces across the nation. Another grassroots organization, SCOPE (Support and Custody Orders for Priority Enforcement), played a part as intervenor in Suzanne Thibaudeau's appeal, as I will show later.

Feminist organizations often act collaboratively in solidarity. PACT, in feminist tradition, sought collaboration with the Alberta Status of Women Action Committee (ASWAC), another volunteer organization not tied to the state. In all policy fields, ASWAC cites advocacy work (for groups and individuals) as one of its most important functions, so it should come as no surprise that individuals and smaller organizations contact ASWAC in order to find support for their concerns. ASWAC was contacted by Barbara Smith and Karen Goodman-Price, the founders of PACT, in the spring of 1992. However, my contact at ASWAC stated that PACT was very well organized and very "well-fuelled", so much so that ASWAC was not tempted to assume a prominent advocacy role in their tax matter. In smaller ways, ASWAC was able to help: by lending space in the ASWAC office to distribute pamphlets; by advising about petitions and letter-writing campaigns; by offering practical advise against Smith and Price publishing their personal phone numbers in the newspaper and on PACT posters; and by receiving phone calls and redirecting them to PACT.

Smith and Goodman-Price, by their dynamic personalities and their barrel-ahead enthusiasm, put the PACT issue before local media for over one year. But, as is often the case with passionate grassroots organizations, the two founders suffered from "burn-out." The next president, Jan Illing, was equally as dynamic but circumstances forced her to move far from the area shortly after she began her term. During this year, the cohesion of the group began to unravel, partly owing to a lack of leadership; partly owing to resentment over "free riders" who did little more than pay their membership dues; and, largely owing to funds insufficient enough to keep up their mail-outs. (Only $440.00 was in their account, according to treasurer's report read aloud at the meeting on 27 March, 1993). The last word I received from the PACT executive was that PACT would disband if more support were not forth-coming, and I am afraid that PACT has since slipped into oblivion.

Nevertheless, when we judge the successes of PACT, we must remember that it was successful in raising the consciousness of men and women in Alberta by numerous television, radio, and print media interviews over the two years or so that it was in existence. The crowning glory of PACT's unconventional activity in Edmonton was a demonstration staged in front of Canada Place (which houses Revenue Canada) on the deadline for the filing of tax returns. The blare of horns from trucks and cars indicated support for the cause. Television cameras followed approximately fifty very vocal women and their children into the government office as we deposited our returns.

Another success must be counted as well. The monthly meetings of PACT were important and successful at building support among those suffering the very real effects of the taxation policy regarding child support. Anecdotal evidence of the tax burden was shared and while the economic hardship remained unchanged, emotional and psychological support alleviated some of the frustration.

PACT epitomized the energy and commitment for which grassroots organizations are respected. Yet their efforts alone are not enough to effectively object to what they perceive to be unjust taxation treatment. Their unconventional political activity, not sanctioned by the state, could not in and of itself bring about tax remedies for custodial parents.

Individual Initiatives: Heading for the Courts

There are three major institutions with whom women meet individually in contests of tax policy and they include legislatures (politicians), bureaucracies, and courts of law. Complex questions beginning with motivation, symbolic politics, substantive representation, and efficacy complicate political and legislative activity at the level of mass participation and at the level of decision-making.

At the bureaucratic levels, state-sanctioned provisions by which objections to tax treatments are made in Canada-- "the notice of objection"--have not been successful for women either. As the basis of the objection procedure, the government declares that taxpayers must have "ample opportunity to allow their views to be known directly or through the political process . . . against the arbitrary power invested in the hands of taxing authorities."[190] In reality, the tax treatment appeal process of objection is intimidating owing to the perceived power of Revenue Canada, the bureaucracy upon which the responsibility for implementation of tax policy falls. It is intimidating regardless of Revenue Canada's statement of its objective: "to maintain public confidence in the integrity of the tax system, by administering tax and related legislation fairly, uniformly, and courteously."[191] Those who muster what it takes to file a "notice of objection" must do so within ninety days from the date of the issuance of the assessment or reassessment notice. A notice of objection should be sent by registered mail to the Deputy Minister of Revenue Canada Taxation. Despite the daunting nature of the notices of objection, "96.4 percent of notices of objection are settled without recourse of the courts"[192]--in whose favour is unknown.[193]

The most hopeful avenue for reform of the taxation of child support today is through the judicial system, whether the courts strike down the legislation or motivate parliament to make changes. However, this route to tax reform only works when there is much collaborative activity and determination on behalf of feminists and a window of opportunity presented by the gatekeepers who determine if the case proceeds.

While equity is a stated social goal of income tax policy, there is no legal rule under the *Constitution Act 1982* which requires a tax to be uniform or non-discriminatory. Even if there were, discrimination is difficult to prove-- with the onus resting on the complainant. On the other hand, Section 15 of the Charter of Rights and Freedoms guarantees equality before and under the law. In 1987, the CACSW called for a Section 15 challenge to taxation policy, and in 1989, Susan Thibaudeau complied. The single mother from Quebec filed separate tax returns for herself and for her children (as such, child support was not claimed as income for Thibaudeau but rather claimed by the children separately), and she did so knowing that she was not complying with the law. In his assessment of her tax, the Minister of National Revenue, Otto Jelinek, in 1991 included the child support as her income, and because of this, Thibaudeau appeared before the Tax Court of Canada (in *Suzanne Thibaudeau (Appellant) v. Her Majesty the Queen (Respondent)*). Thibaudeau contended that Section 56(1)(b) discriminates against her (citing Section 15 of the Charter) in that it imposes a tax burden on amounts which were to be used for the sole benefit of the children of her former marriage.

Throughout the years and in various capacities, Ms. Thibaudeau has enjoyed solidarity and the support from old and newly-formed women's organisations that have come together over equality issues. Together they have taken this issue into the political realm. Thibaudeau has received more than four thousand letters of encouragement from women across Canada. Annual benefit golf tournaments in Trois Rivieres, Quebec, have raised money for her legal expenses. "Most of those who have bought tickets are men," Thibaudeau said with a smile,"[194] showing her appreciation for irony. Valuable support has come for Thibaudeau from another feminist group, the Legal Education and Action Fund (LEAF). Recently, LEAF sought intervenor status in these the final stages of Thibaudeau's case as it goes before the Supreme Court of Canada. Leave to intervene was granted, and subsequently LEAF has forwarded a factum to that court.

LEAF was formed in 1985, the same year that Section 15 of the Charter of Rights and Freedoms came into effect, as a litigation strategy to ensure that when the courts begin to interpret Section 15, the perspective of women was brought to the court. Marie Gordon, a LEAF lawyer in Edmonton, claims that the litigation has been successful in several law-making cases where the Supreme Court of Canada has adopted LEAF's understanding of Section 15 "almost verbatim."[195] In this respect, Canadians are miles ahead of the Americans, Ms. Gordon remarks. Part of LEAF's success lies in the fact that LEAF has attracted the brightest of legal talent in Canada to its group, for example, Mary

Eberts and Catharine MacKinnon. LEAF, a local and national organization, is funded by donations, fundraising, and Secretary of State funding which today is "one fifth or one tenth"[196] of what it was at the outset in 1985.[197]

The litigation process in tax contests begins with the Tax Court of Canada, the court which held Thibaudeau's first case. The Tax Court, which has replaced the former Tax Review Board, has the status of any other court of law. The Court sits regularly in major cities across Canada and it handles appeals without formality. Thus, the taxpayer, lawyer, relative, or any other person can appear before it; it does not require any special form of application; it is not bound by any legal rules or technical evidence; and there are no court costs. When decisions are made under the "informal procedures" of the Tax Court, the decision is *obiter (dictum)* --"not to be treated as a precedent for any other case" (Tax Court of Canada Act, 1985). Recourse beyond this court is only through judicial review as was due course when Thibaudeau's case was heard by the Federal Court of Canada, Appeals Division. Beyond the Federal Court of Canada is the court of last resort in Canada, the Supreme Court of Canada. The Department of Justice (tax litigation section) is responsible for providing all legal services and advice required for the courts.[198]

To begin to give some idea of the extent to which Thibaudeau's frustrations may be shared by other women across Canada, it was revealed during the trial that in 1989 the matter of child custody was distributed as such:

Table 2

Persons Who Have Custody of Child(ren) Following Divorce

(expressed in percentages)

Person who has custody	%
the mother	74.2
the father	12.6
joint custody	12.9
person other than parents	0.2

(Source: *Thibaudeau v. M.N.R.* , [1992])[199] Statistics for the year in question (1988) varied only slightly. The interpretation of these figures is not as straightforward as it would seem. I know from my own experience that the joint custody figures are suspect. While my former husband and I have joint custody awarded in our divorce papers, I am later in the document named as the sole custodial parent: our joint custody arrangement merely means that I must advise and consult the father of the children on major issues. More to the point, in the matter of child support, in 1990, ninety-eight percent of the payers complying with 56 (1)(b) were fathers; correspondingly, ninety-eight percent of the recipients were mothers.[200] That this is a women's issue based in the experience of women is beyond doubt in my mind.

Suzanne Thibaudeau did not claim discrimination in her case only on the basis of her sex. In addition to her sex, she claimed that the prejudice resulted from her civil status of belonging to a group with the characteristics of being divorced, self-supporting, in custody of her children, and receiving alimony for the children only; and on the basis of her social status of having to pay tax while other people in similar circumstances do not have to pay tax. [201]

> The appellant argued that the inclusion-deduction system is an archaic and outmoded system going back to the 1940s which does not recognize the evolution of the role of women over the years. Moreover, this system causes her prejudice since there is no legal provision under which the courts are compelled to take tax consequences into account in deciding on the quantum of alimony.[202]

Furthermore,"[t]he appellant argued . . . that if this provision benefits Canadian society it is much too high a price and does not pass the proportionality test in section 1 of the Charter. . . ." [203] Section 1 of the Charter states that "[t]he Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. Precedence for the proportionality test of Section 1 of the Charter was outlined in 1986 by the Supreme Court: the *Oakes* test continues today according to common law.

> Two requirements must be satisfied to establish that a limit is reasonable and demonstrably justified in a free and democratic society. First, the

> legislative objective which the limitation is designed to promote must be of sufficient importance to warrant overriding a constitutional right. It must bear on a "pressing and substantial concern." Second, the means chosen to attain those objectives must be proportional or appropriate to the ends. The proportionality requirement, in turn, normally has three aspects: the limiting measures must be carefully designed, or rationally connected, to the objective; they must impair the right as little as possible; and their effects must not so severely trench on individual or group rights that the legislative objective, albeit important, is nevertheless outweighed by the abridgement of rights.[204]

Countering Thibaudeau's arguments, the Crown argued instead that paragraph 56(1)(b) was not discriminatory but rather that it was intended and did in fact "secure a substantial benefit for a significant portion of the population through income-splitting."[205] Income splitting, in this case, it was argued, represented exceptional measures "designed to deal with the disintegration of the family which has been going on for some time, and to take into account the reduced capacity of separated or former spouses to maintain two households."[206]

One of the Crown's witnesses from the Personal Income Tax Division in the tax policy branch of the Department of Finance gave evidence to show that generally in Canada when the payer deducts child support and the recipient claims it as income, the provisions are advantageous to the recipient since, generally once again, the income is taxed at a lower marginal rate. This is said to free up more of the alimony (by decreasing the amount of tax to be paid) ". . . thereby permit[ting] the alimony to be increased by an amount equal to the tax thus saved."[207] In the synopsis of the case, only a giant leap of faith bridges theory and practice.

> The Law of Quebec, as well as that of the common law provinces, requires that all of the tax consequences to the payor and payee must be taken into account when determining the amount of alimony to be paid. This means that the payments should be "grossed up" to include compensation for the tax that will accrue on the payments to the payee. If this is done, such payee will suffer no prejudice even if those payments must be included in his or her income.[208]

"Grossing up" by definition means "an additional sum awarded to compensate for the tax that will accrue on the payments to the payee."[209] The theory of "grossing-up" is not new. It has been applied previously, for instance in cases involving physical injuries where compensations or awards are paid. In child support cases, however, the theory does not always translate into realtity. First, in practice, judges and lawyers until very recently rarely considered the tax implications when deciding maintenance payments. There is no mechanism by which total dollars are compared to tax rates. Second, this logic violates the progressivity based on ability-to-pay concept. Thibaudeau's estranged husband pays a higher tax rate because he makes more money. His ability to pay is greater than is Thibaudeau's. Therefore the logic argued represents a regressive tax treatment.

At question then is not whether paragraph 56(1)(b) of the *Income Tax Act* achieves its main policy objective of providing an overall tax savings to separated or divorced spouses which provides the potential for the granting of higher support awards, but rather whether these tax savings translate into *reality* in the purses of mothers caring for children of dissolved unions. The Crown also argued that there is not discrimination but rather better treatment in comparison with families who have not separated or divorced since the exceptional measure of income splitting is not available to spouses who stay together.[210]

The Crown noted that the recipient of the child support is eligible for more tax deductions and income tax credits than is the payer, including the equivalent to married deduction, the dependant credit, the child tax credit, the goods and services tax credit, and the child care expense deduction. While the tax deduction is an incentive for the non-custodial parent to make the full payments on a regular basis, the payer of the maintenance monies was unable to claim child deductions or income tax credit as the recipient could.[211]

Before making his decision, Tax Court of Canada Judge Alban Garon deemed it necessary to compare the appellant's (Thibaudeau's) and the respondent's (the Crown's) position in relation to the exclusion/inclusion of child support to determine the difference, or the tax cost to Ms. Thibaudeau. The following is a table compiled from the information set out to the court.

Table 3

TAX CONSEQUENCES OF THE TWO CONTESTED POSITIONS

(expressed in dollars)

	Thibaudeau's Tax Return	Government's Assessment	Difference
INCOME:			
Employment:	26,009.22	26,009.22	
Family Allowance	625.68	625.68	
Alimony		14,490.00	+14,490.00
TOTAL	26,634.90	41,124.90	+14,490.00
DEDUCTIONS:			
Pension Plan Contribution	983.46	983.46	
Union Dues	442.10	442.10	
Child Care Expenses	1,700.00	1,700.00	
TOTAL	3,125.56	3,125.56	
NET TAXABLE INCOME:	23,509.34	37,999.34	+14,490.00
NON-REFUNDABLE TAX CREDITS			
Basic Personal Amount	6,066.00	6,066.00	
Equivalent to Married	5,055.00	5,055.00	
Dependent Children	392.00	392.00	
Contributions QPP	489.47	489.47	
U. I. Premiums	501.65	501.65	
Medical Expense	1,135.18	700.48	-434.70
TOTAL	13,639.30	13,204.60	-434.70
Tax Credits (17% of total)	2,319.00	2244.78	- 74.22

TAX CONSEQUENCES IN DOLLARS OF THE TWO CONTESTED POSITIONS- cont'd

INCOME TAX CALCULATION:

TAX ON TAXABLE INCOME	3,997.00	7,376.89	+3379.89
Less			
Non-refundable tax credits	2,319.00	2,244.78	
SUBTOTAL	1,678.00	5,132.11	
Plus			
Surtax (4%)	67.00	205.28	+ 138.28
FEDERAL TAX PAYABLE	1,745.00	5,337.39	+3,592.39
Deduct:			
Refundable credits:			
Quebec Rebate (16.5%)	277.00	846.79	+569.70
Child Tax Credit	1,130.00	447.80	- 682.20
SUBTOTAL:	1,407.00	1,294.59	- 112.50
NET FEDERAL TAX PAYABLE:	338.00	4,042.80	+3704.80

(Compiled from: *Thibaudeau v. M.N.R.,* [1992])[212]

After considering the appellant's and the respondent's arguments, Tax Court of Canada Judge Garon began his analysis with a definition of discrimination, as defined in *Andrews v. Law Society of British Columbia [1989].* Discrimination

> . . . may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens,

> obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.[213]

Dicrimination cannot be discussed without discussing equality. Equality, Garon continued, is a comparative concept within a social and political setting,[214] and then quoting another judge's decision in a different case, Garon concurred that "there will always be an infinite variety of personal characteristics, capacities, entitlements and merits among those subject to the law. . . ."[215] Equality, then, is an "unattainable ideal"[216] since equality means different things to different people.

While the judge believed that Thibaudeau belonged to the group of divorced, self-supporting custodial parents who receive alimony for their children who are entitled to the guarantee set out in section 15, as her lawyers argued, he found in light of the benefits of the exceptional measures of income splitting that the effects of paragraph 56(1)(b) did not entail any prejudical consequences for the appellant. Moreover, the judge concurred with the counsel for the Crown that the inclusion/deduction system freed more money for the children, thus conferring beneficial consequences for all. In addition, the judge noted that while case law has shown that the tax implications have often been in question, the tax consequences in the Thibaudeau case were to some extent considered at the time of the award.

In conclusion, the judge stated that

> . . . if the court takes into account the tax consequences on both the payer and the recipient of the alimony in determining the amount of the alimony to be paid for the support of the children the parent who receives the alimony suffers no prejudice even if he or she must include those payments in his or her income. If a trial court fails to consider the tax consequences or assesses them incorrectly, the party concerned should exercise his or her right of appeal to obtain the adjustment to which he or she is entitled. Obviously, where there is an agreement between parties, the party who recieves the alimony must satisfy himself or herself that the alimony is grossed-up to a fair level. . . . [217]

It would seem then that a women for whom tax implications were not considered and grossing up had not occurred at the time of the awarding of child support would have had a stronger case than did Thibaudeau.

When all was said and done, the judge found that Thibaudeau had " not personally sustained any fiscal burden as a result of the receipt of alimony payments" therefore she suffered no "discrimination" which would have been protected under section 15 of the Charter of Rights and Freedoms. In the judge's final comments, he lectures:

> The inclusion-deduction system of alimony may raise in its application to a particular case certain difficulties but a statute or a provision therein cannot be considered for this sole reason discriminatory and unconstitutional. If a party feels aggrieved by the application of this system or by provisions of the law underpinning it, the remedy does not lie in invoking section 15 of the Charter dealing with equality rights but rather in showing the erroneous application of the system in a comprehensive legal context before the Courts which are called upon to deal with matters relating to alimony.[218]

Judge Garon appealed to family courts that it was their obligation to remedy the grievances relating to paragraph 56(1)(b).

In a second Tax Court case in which the taxation of child support is argued to be discriminatory according to Charter section 15, Brenda Schaff in *Brenda Schaff v. Her Majesty the Queen (Vancouver, 1993)* argued that the Act imposes a burden on persons like herself (poor, female, single custodial parent). Secondly, Schaff, unlike Thibaudeau, cites Section 7 of the Charter as well in that "the inclusion in her income of maintenance payments for her children deprives her and her children of the right to 'security of the person' . . . ."[219] Neither argument was successful in its legal challenge, but several interesting points came to light throughout the trial. For example, Brenda Schaff was found to have economic means beyond the poverty line for her region and circumstances as measured by the "Low-Income Cut-off" (LICO)-- $24,389, and, alternatively, as measured by the Canadian Council on Social Development (CCSD)-- $25,817. Ms. Schaff's meagre wage was $25,999.92. [220] Do not succumb to the seduction of these statistics because there is a very large flaw in them as they relate to the experiential reality of women. LICO, the methodology that Statistics Canada uses to determine poverty lines, considers in its evaluation some variables such as size of family and degree of urbanization in the location where the family lives. LICOs do not differentiate, however, between families headed by two parents or by a single parent: a three person family is simply a three person family. This may not seem a problem until one finds that LICOs do not count child care expenses among "necessities." A methodology --suspect first because it discounts child care expenses even in an intact family-- is doubly suspect when it is applied to a single parent family headed by a working mother where child care expenses are neither optional or inexpensive. Methodologies upon which the courts depend do not reflect the experiential realities of many custodial parents. For precisely this reason, feminist perspectives must be brought to the legislative, bureaucratic, and judicial systems.

Dr. Jane Friesen, an economist from Simon Fraser University, gave much good testimony at the Schaff trial regarding the systemic disparity between the economic circumstances of men and women. As to disadvantage, Dr. Friesen testified that ". . . any section of the Act that reduces their disposable income confers a financial disadvantage on women"[221] and that discrimination should be viewed in the context of social and economic plight of women. It is not enough to simply recognize the feminization of poverty as an entrenched social phenomenom-- that shows acceptance. Decisions must move towards equality, equity, and justice.

In the *Schaff* case, Tax Court Judge Gerald Rip accepted the larger context of the social, political and legal disadvantage suffered by poor, divorced women, and he noted the growing trend in the feminization of poverty. Schaff, he decided, like Thibaudeau was a part of a "discrete and insular minority worthy of protection under Section 15 of the Charter."[222] On the other hand, after noting the importance of the larger social, political, and legal context, the judge opted for the status quo. In political theory, institutions resist change, so context is viewed with an eye to justification. In feminist theory, it is not enough to look at context unless one looks with an eye to change, to imagine better realities. Rip found that the appellant was not suffering from any discriminatory effect from 56(1)(b). Relying on his view through rose-coloured glasses, the judge remarked that this paragraph of the *Income Tax Act* had the potential to provide potential and substantial benefits through income-splitting. He, like Garon before him, decided that the payer, recipient, and family courts must remedy tax contests.[223]

Schaff's case was different from Thibaudeau's in that tax implications were not considered by the judge who originally determined her family's child support award. Schaff's circumstance was the norm: evidence presented at her trial showed that of three hundred cases heard in a North Vancouver family court, only three considered tax implications.[224] Given these numbers, and in light of the Thibaudeau decision, surprise must have been counted among the emotions Schaff experienced following the outcome of her trial. In fact, Schaff was "devastated" by the court's decision in her case since she had been "swamped with calls and letters from women across Canada hoping that [she] would win."[225]

In the third case presented in this paper, the appeal of the Tax Court decision against Thibaudeau held in the Federal Court of Canada (Appeals Division), the same issues arise for re-interpretation. As intervenor, SCOPE (Support and Custody Orders for Priority Enforcement) presented "voluminous" materials to the court, but, at least one judge was not moved by their testimony. Judge James Hugesson, who wrote the majority decision (2-1), begins by addressing the argument brought forth by SCOPE. While both SCOPE and Thibaudeau used Section 15 arguments, their argued grounds for discrimination were different. SCOPE claimed that paragraph 56(1)(b) discriminates against Thibaudeau, who is a member of a group that suffers discrimination on the grounds of sex--one of the enumerated grounds in Section 15. Thibaudeau claimed in addition (as did Schaff) that the same paragraph discriminates against her as a member of a group of "separated, custodial parents receiving maintenance payments for their children" (Schaff added the personal characteristic of being poor, making her group a smaller subset of the Thibaudeau group)--grounds analogous to those enumerated in Section 15 of the Charter.[226]

SCOPE's argument was similar to the *Symes* case, which was also based on discrimination on grounds of sex. As you may recall, Elizabeth Symes argued that her child care expenses should be fully deducted for tax purposes from her income as a self-employed person. Hugesson explains that Section 63 in *Symes* and Section 56 in *Thibaudeau* are "facially neutral,"[227] unlike laws that may apply to pregnancy or prostate cancer. [228] Sex is the *only* personal characteristic argued in *Symes* and by SCOPE in *Thibaudeau* , and what seems to be important here is that a sex-based distinction begs a comparison between the treatment of men and women.

Judge Hugesson develops an argument by citing Judge Iacobucci in *Symes* who stated that Symes did not need to prove that women disproportionally incur social costs of child care– that would be a social imposition. Rather she had to prove that Section 63 showed that women disproportionally pay child care expenses. Similarly, then, if logic prevails, Thibaudeau must prove not that women are disproportionally custodial parents--that is a societal imposition--but rather that women disproportionally receive child support and pay income tax on that child support. The two paragraphs only produce adverse effects if they "subordinate" women who are already as a group paying disproportionate child care expenses[229]/taxes on child support.

Hugesson has difficulty with the Iacobucci passages. He likens the argument to one that claims that a policy that discriminates against Blacks would be saved by showing that it is also harmful to aboriginal people. He argues instead:

> in my view it is not because *more* women than men are adversely affected, but rather because *some* women, no matter how small the group, are *more adversely* affected than the equivalent group of men, that a provision can be said to discriminate on grounds of sex.[230]

This fits nicely with the feminist tenet that "none of us has made it until all of us have made it." Hugesson continues: "The focus, surely, is not on numbers but on the nature of the effect; on quality rather than on quantity."[231]

> . . . I, like the Tax Court judge, have simply no doubt that paragraph 56(1)(b) impacts adversely in more women than men. That is because mothers are far more likely to be custodial single parents than fathers. Since, however, the legislation must also impact in exactly the same way on custodial fathers, although in very much smaller numbers, I do not see how it can be said to differentiate or to discriminate on the basis of sex. In my view, the importance of the material showing the numerically disproportionate effect of paragraph 56(1)(b) on women must come in the context of a Section 1 analysis.[232]

A section 1 justification could not be determined because the government (upon whom it is incumbent to do so) could not provide enough good evidence.

After determining that the discrimination is not to be found on the basis of sex, Hugesson instead turns to the argument he accepts. The group to which Thibaudeau belongs is that of separated parents having custody of a child. The discrimination is on grounds of family status: ". . . such status has historically been, and is still, used as a basis for stereotyping,"[233] and the grounds are analogous to the enumerated grounds in the Charter.

As to the arguments presented by the respondents in the Tax Court case that the equivalent to spouse deduction, the dependant tax credit, and child tax credit actually placed custodial parents in an advantageous rather than disadvantageous position, Hugesson found that all of these benefits in 1989 did not equal the tax cost to Thibaudeau in the same year. That aside, these credits are in and of themselves separate from the inclusion/deduction clauses of the *Income Tax Act* and cannot be said to correct or compensate for the latter.[234] New evidence presented in the appeal showed again that tax implications of child support awards are considered only in a minority of cases. Where Tax Court Judge Garon advised child support recipients to set aside money from the support to pay taxes, Hugesson acknowledged that in some cases it was financially impossible to do so without harmful effects on the children since two-thirds of Canadian women and children live in poverty following divorce. The appeal court judge found that the justifications of the policy which state that the exceptional measures of income splitting free up more money for the children are not borne out in reality. Moreover, since child support awards and tax implications are not usually indexed to compensate for changes in expenses over time, the contribution of the custodial parent is disproportionally higher over time.

Hugesson felt Garon's call for family court legislation to remedy the tax problem was misdirected since ". . . it is simply not legitimate to look outside the income tax system to correct an injustice which that system has itself created."[235] Showing fine insight regarding causation, Hugesson wondered about the circularity of Garon's proposal. Since income tax comes after income, how can one reasonably ask that income be raised to compensate for tax? The argument is much like "putting the cart before the horse." Income is what it is. Income tax follows from income. Income tax does not, nor should it, set income.

As Hugesson presented his final words on the subject, he took an opportunity to chide the respondent's counsel for its request that, in the event that Thibaudeau should win, the court ". . . delay any declaration of invalidity of paragraph 56(1)(b) for a period of time to allow government to introduce the necessary amendments to the Act."[236] There were a number of reasons why this could not be done, some technical in nature, but at a ". . . more fundamental level, we are dealing here with the rights of individuals which are guaranteed to them by the supreme law of the country. It would take very strong reasons indeed to justify any suspension of those rights. None has been suggested."[237] Given the entrenched nature of institutions, feminists must applaud when fundamental rights win over administrative convenience, as was the case here.

However, this success was short-lived. Subsequent to the decision of the appeal in Thibaudeau's favour and the latest information on this matter, the government has successfully persuaded the Supreme Court of Canada to suspend the decision of the Federal Court of Canada (in effect, suspending also the rights of Suzanne Thibaudeau and the rights of many others, given the legal implications of the decision) until the entire matter could be heard by the Supreme Court.

Members of the government responded quickly to the Federal Court of Canada's decision. Finance Minister Paul Martin and Justice Minister Allan Rock predicted chaos in family law and expressed a fear about revenue losses.[238] To illustrate the government's vested interest in this law, the government under the current inclusion/deduction system collects $331 million a year in taxes on spousal- and child-support.[239] Statistics from Thibaudeau's *first* trial indicate that this tax savings to recipients (through taxing recipients at the lower marginal rate) "cost" the federal government $145 million in 1988 and the provincial governments $95 million[240] for a total cost of $240 million. Were child support not be taxed at all, the government's "cost" would increase significantly. Interestingly, if child support were taxed in the hands of the non-custodial parents, it is estimated that taxes would amount to $661 million because the incomes and tax rates of fathers are generally higher.[241]

Federal Justice Minister Allen Rock has stated publicly many times that he is committed to revamping the child-support system, but what aspects are scheduled for revamping is in question. Indeed, indications point to the problem of fathers who default on their child support payments and a new support payment guidelines for the courts as high on his list for reform. [242] Liberal MP, Beryl Gaffney, warned that the Liberals would be fool-hardy to appeal the Appeals Court ruling to the Supreme Court. Secretary of State Responsible for Women, Sheila Finestone, commented on the emotional factor of the decision which implies that the government ought not to appeal: women have had enough.[243]

The media, as it could be expected, responded in two ways: in support of Thibaudeau and other single mothers who suffer increasingly from a spiraling poverty due to loss of financial status complicated further by an unfair tax system; or against Thibaudeau for the uncertainty which would result from the Court of Appeal's decision. The latter position argued, in the editorial of the *Edmonton Journal,* that

> [i]f the ruling stands, it will bring considerable chaos to the existing regime--both taxation and courts--for child-support payments. Several lawyers say their clients who pay support are already considering a return to court to reduce the payments, on grounds that the original payment recognized that the parent receiving them would have to pay tax.[244]

CBC radio on October 4, 1994 warned that this decision would send "everyone" back to the courts. As feminists know, unfounded fears and hollow threats arise out of change. After all, the statistics, backed by the experiential reality of women, show that in only one percent of the child support awards are the tax implications even considered.

Since Canadian tax policy follows the British and American models, a brief look at similar tax issues will shed some light on the extent to which political will can play a role. In a comparative example, a decision in a case decided in the House of Lords (United Kingdom) used a different approach reaching a different conclusion. *Sherdley v. Sherdley* (1987) highlighted the value of income-splitting techniques[245] but this time the children were the supposed benefactors.

> In the United Kingdom, taxpayers are entitled to deductions in respect of third-party payments for the maintenance of a child on the dissolution of a marriage. For tax purposes, the payment is considered to represent income to the child . . . subjecting the fees to taxation in the children's hands who, because of their personal rates and allowances, would probably not pay any tax in relation to the income.[246]

In Canada, children do not possess taxpayer status; neither would we necessarily want them to be taxpayers in all cases. Certainly, they have even less ability to pay than do women. On the other hand, Thibaudeau must have wanted her children to benefit from income-splitting when she filed her 1989 returns in their names. Women must not be tempted to transfer a problem worrisome to them onto another disadvantaged group. In the British example, it is not clear that children have benefitted from such a tax treatment. Much more analysis would be needed before one could responsibly prescribe this solution.

Child support is not taxed in the United States. (In fact, neither is it taxed in most European countries and Australia.) Will Canada follow the American way after the Supreme Court of Canada hands down its decision on the Suzanne Thibaudeau case on May 25, 1995?

Judicial interpretation has often been necessary for clarification in the tax policy field. In the matter of judicial systems, a liberal system of justice (rather than a conservative system of justice) may help to advance the cause of women. While it would be difficult, and worse, limiting to our discussion, simply to label our entire justice system one way or the other, the concepts behind the paradigm may be useful to our understanding of the courts.

If courts follow strict constructionism, dictated by a very old common law, they may be more concerned with precedents, rules, and technicalities, in other words, the mechanics of a legal system, resulting in a less flexible court. Hiding behind the letter of the law, these courts could be characterized by weakness and timidity. However, notwithstanding concern for their reputations, judges of such courts would not be pressed to issue anything other than a conservative, technically correct judgement. They can rely on the due course of appeals to re-visit even trivial judicial matters. In fact, the judge who wrote the bold decision for Thibaudeau's appeal noted that his would not be the last word.

The Supreme Court has, in its early years, a history of strict constructionism following a model which ensured politics and law-making were left to politicians and legislators. Its character began to change only in 1970 with the appointment of Bora Laskin to the bench. Given his credentials as one-time labour conciliator and as a full-time law professor (without major experience in private practice), Laskin's appointment added enough intellectual weight (along with Emmet Hall and Louis-Philippe Pigeon) to swing the Court away from a technical, administrative authority to a philosophical, intellectual court whose defence of civil liberties was more in keeping with the Prime Minister at the time, Pierre E. Trudeau. Multifaceted in his interests, Laskin, who was to become Chief Justice, is quoted as saying of the Court, "What is required is the . . . free range of inquiry. . . . [e]piricism not dogmatism, imagination rather than literalness. . . ."[247] Other appointees to follow this vein were Willard Z. Estey, Robert George Brian Dickson, and Antonio Lamer.[248] This new place for creativity, coupled with a new Charter of Rights and Freedoms in 1982, which gave judges the ability to strike down legislation, left room for a more liberal approach, and the Court is now an important actor on the public policy stage. This may not be borne out in fact however.

The liberal nature that I am arguing for does not exist in Canadian courts in proportions enough to adequately address the pressing concerns of women. Since the Charter of Rights and Freedoms, and perhaps indicative of the cases expected for many years to come, those named to the Supreme Court of late have been constitutional and administrative law experts, and thus, one would think, structuralist and institutionalist in perspective. Does this move the court back to literalist interpretations? If the creativity of the Supreme Court since 1970 continues and flourishes, human rights advances may be presented with windows of opportunity. For instance, in the case of Elizabeth Symes, the two female Supreme Court judges accepted her argument, while the seven males opposed. Judge Claire L'Heureux-Dube, it was reported, wrote a

> . . . lengthy, carefully documented, closely reasoned, losing argument. . . [wherein]. . . she impugned the male bias in the interpretation of the law which found it normal to consider hockey tickets and membership in clubs as legitimate business expenses to be deducted from taxable income, while child-care expenditures are not."[249]

In light of the new role of Supreme Court judges, human rights activists including feminists must begin to monitor the composition of the Court by paying close attention to its appointees. With a concern to the outcome of judicial appeals, such scrutiny and monitoring has long been the case with regards to the Supreme Court in the United

States.

Collective litigation: Coming soon to a court near you.

Class action suits have not had the success in Canada that they have in the United States.[250] Until recently, Quebec was the one notable exception as it was the only province to authorize class actions. Statistics show that once a class action suit has been authorized by a court in Quebec, the plaintiffs have a reasonable chance of success.[251] Ontario has a relatively new *Class Proceedings Act* which some claim to be even broader than Quebec's or than that of most American states.[252] Alberta allows class action suits but barriers (relating to examining and witnessing; to listing of every member of the suit; to financial problems; to the exclusion of anyone with a slightly different case) make class action suits "non-existent" in this province.[253]

The CACSW advised against class action suits, owing to "time and expense . . . combined with a lack of clarity in the area of women's legal rights."[254] Nevertheless, following the first Thibaudeau case, fifteen hundred women in Quebec (including Thibaudeau) and hundreds of other women across Canada joined together to file a class action suit against the federal government in regard to paragraph 56 of the *Income Tax Act*. While these women are individually motivated by their being hurt directly and personally by the present taxation policy, many of them understand the injustice of this specific issue as a broader gender issue. Given the successes in the United States and in our province of Quebec, the area of collective litigation is also herein indicated for future study.

Media:

Similar to collective litigation, another area indicated here for further study is the use of the media as an effective tool for tax reform. Vladimir Salyzyn, in his book, *Canadian Income Tax Policy: An Economic Evaluation,* concedes the role of interest groups and the media in the tax policy process. He claims that individuals can do little by themselves to "obtain favourable tax rulings, but by combining forces with others with the same interest, they can often exert substantial pressure on policy-makers."[255] Salyzyn explains, too, how the media has a role to play in presenting the issues to the public. This indicates that women organized to challenge the federal government over tax policy must maintain their media contacts. With regard to general strategies, Salyzyn suggests that "special interest groups" in order to influence tax policy, could employ

> a) the direct use of the media (for example: advertising),
> b) the indirect use of media (for example: demonstrations), ...[256]

PACT members have participated in such activities garnering media exposure on electronic and in the printed press including "staged for media" demonstrations at federal offices and open defiance of the law with regard to the filing of their income tax returns. Individual women have picketed the homes and offices of "deadbeat dads" in hopes that public embarrassment via the news media will change their desparate situations. Other women have used poster campaigns against fathers who will not pay.

The media is a very powerful tool in public policy reform, and warrants very close examination with an eye to strategic planning. The use of media to advance feminist causes is here recognized as powerful in effecting change, and given the constraints of this thesis, it is only indicated as necessary for future study at least insofar as it relates to tax policy.

Conclusion: The Role of the Women's Movement in Tax Policy

To a great extent, the area of tax policy in Canada is the domain of corporate sector actors and state actors in the context of our patriarchal society. The women's movement, owing to their relative lack of influence in this policy field, continues to play a negligible role in policy formulation. In fact, it appears that the interests of women are truly influential at no stage of the policy process. Rather, women are relegated to act generally in a reactionary fashion. Yet given our subordinate position and the lack of political resources inherent in that position, it is truly remarkable that women have advanced the position of women to the extent we have. Women have historically, and continue contemporarily, to contribute significantly to meaningful change and gender equality in legislatures, bureaucracies, through the legal system, but especially through the initiatives of individuals and grassroots organizations. In organizations or as individuals, women successfully claim their rightful place as full participants and full citizens in our liberal democratic society.

CHAPTER FOUR

FEMINIST CONCLUSIONS

Over the years in their re-cycled speeches, Ministers of Finance have stated of the tax policy that "not only must the system be fair, but it must be seen to be fair." Is the tax system fair? Answering Charles Hyneman's questions, "how much of the population shares in how much of the critical decision making with how much impact or influence?" we can safely say that the influence in tax policy-making has been wielded by a select few indeed with a detrimental impact on many. I do not want to make a case for a strictly majoritarian view, rather, I want to make a case for the introduction of democratic participation with a serious consideration for minorities into an otherwise closed, top-down, interested tax process successfully captured and managed by political elites and big business.

Is the tax system perceived as fair? With so few sharing in this critical policy area, it is not likely that many deem the system fair. That the policy field is fraught with litigation says much. In the last few years, the usual grumbles across the country have escalated to calls unprecedented in Canadian history for a tax revolt. No, the system is not perceived by many Canadians as fair, and certainly, custodial parents, by and large female, see themselves and their children as shackled by an unreasonable tax burden.

Fairness and equity are matters of perception and of interpretation. These concepts do not exist without context. Canada has from its beginnings developed a political culture steeped in conservative and liberal ideologies and from these two ideologies have come hybrids of each. In addition, Canada has a collectivist tradition in democratic socialism which of late is not far from the Red Tory ideology. These ideologies are set in the context of our patriarchal society supported by the Aristotelian notion of equality which assigns the "proper" place for women as the private sphere.

Because these ideologies and their context have been longstanding and protectionist in their application, androcentric views have evolved to be understood as tried and true. These understandings and interpretations are understood as common sense, and have been codified in various ways including legislative acts, regulations, and legal precedents. "If rationality is measured by point-of-viewlessness, what counts as reason will be that which corresponds to the way things are, practical will mean that which can be done without changing anything."[257] More importantly, androcentric views have led to imprisoned thinking for the polity who by way of socialization and efficacy issues has difficulty imagining other alternatives.

The androcentric perspective--a gendered perspective-- leads society down a path where "reality" and "truth" reflect the male bias. The public sphere is understood and evaluated in terms of production, revenues, and consumption, and in a circular and reinforcing way, this spills into the private sphere where family resides.

Until recently, taxation has not been a controversial topic for discussion in the general public in the same way that abortion, rights for homosexuals, capital punishment, or gun control have been. Taxes are indeed a part of our political culture, and the tax treatments following that political culture can be understood as common sense. Nevertheless, there are few things about which people complain as much as they do about taxes. The general public, from the very vocal working/lower/middle classes who are feeling squeezed right down to the football enthusiast who pays a new tax on his season's tickets, seeks only fairness in the tax system (and ultimately tax reduction or avoidance). Impoverished custodial parents seek a fairer tax treatment too. To make the matter more complicated, tax avoidance is also the goal of rich and powerful elites, therefore tax policy results in a policy paradox.

Current tax policies so heavily weighted in favour of big business and political elites can not be seen as fair to a good number of the polity. Questions about who pays what, when, where, and how become substantive concerns for the polity, and thus, they become political questions. However, the hegemony, in whom the configuration of issues, processes, and evaluative frameworks usually arise, continues to manage politics through the social production of meaning with the result that, if they are to be successful by their standards, a good portion of the polity must wittingly or unwittingly collude. The hegemonic discourse defines the goals, the problems, and the solutions. This unsavory stew, simmering away in the patriarchal pot, has custodial mothers--marginalized in tax policy process--steaming. The feminists among them and beside them can see poverty and the feminization of poverty, as a product of the diverting of capital to serve the confraternity of power which includes capitalists and patriarchal statesmen.

A call to the end of child-support taxation has not until recently had a high degree of visibility. I would argue that the issue is difficult to "promote" because of the general lack of trust and efficacy surrounding taxation policy as a whole. When "nothin' is for sure 'cept death and taxes," radical reform does not jump to mind. Moreover, if one applies utility-maximizing behaviour at the level of the electorate, one can imagine that, being nearly fifty percent of the population, many male voters who pay child-support now or might have to pay child-support in the future will not be motivated to support reform in this area. The same reaction would occur in the legislative, bureaucratic, or judicial arenas wherein there is an over-representation of men.

Because, as Charles Lindblom says, "man cannot think without classifying," a number of public policy models have surfaced. They range widely in perspective, description, explanation, evaluation methods, and prescription, but they are all normative in their premises. General theories of the policy process and general policy models reinforce the status quo by codifying specific aspects of policy formulation. Skeptics of the hegemonic discourse could look beyond the individualist liberal, the utility-maximizing, or the pluralist understanding of policy changes to use, perhaps a Marxist analysis to see child-support taxation as part of the larger economic taxation picture which provides "families" with enough of a tax burden, first, to discourage women from saturating the work place; second, to maintain--at the ready--a reserve army of labour; and third, to facilitate the reproduction of future mother-nourished workers. Nothing short of revolution will produce change in this case. Other skeptics using psychoanalytic theory might see a tax burden for women as a natural consequence of the psycho-social relations experienced early in the oedipal stage of development when periods of identification/ separation produced subject/object (self/other) world views. This theory would suggest that change in tax policy would necessitate a change in the caregiving role (at the societal level) --a generation earlier. The theory or model behind your analysis will determine the prescriptions.

Whatever the theory or model, a skeptic with the feminist perspective considers them. There is no *one* way to do a feminist analysis, instead, a feminist study strives to build on the best of these theories. A feminist will not only "add women" to policy models and theories; instead he or she will analyse and critique the models by going directly to the experiences of women to determine goals, problems, and solutions. "The starting point of feminist theory, then, is in the varied experiences of women, in the concrete situations where they live and are disadvantaged."[258] Suzanne Thibaudeau says that she suffers discrimination and a tax burden from paragraph 56(1)(b), and she rightly extrapolates from her situation: "If the law is bad for me, it is also bad for a lot of other women. And it is bad for a lot of children," she reasons.[259] Women have "ways of knowing." Thibaudeau *knows* that the current legislation contributes to the poverty of women and children.

A feminist method will include reflexivity by naming subjective biases up front. Mine is not an objective account. My account is based in my own subjectivity, and focuses on the subjective experiential realities of women. Above all, this inquiry is for women. Such analyses have at their heart the hope that feminist analyses will become part of the ordinary interpretations of the world -- part of common sense. Feminists want to contribute to a body of knowledge which is "ours" not "theirs." Afterall, feminism is a political movement for social change, and feminists have a mandate to include action in their projects. "The point of studying the situation of women is to work toward changing it."[260] Feminist praxis includes defining the problems, seeking explanations and evidence, evaluating outcomes, and prescribing strategies for change.

Out of stereotyping and common sense in this society at this time, a model of politics has emerged which is conservative, conflictual, competing, and "zero-sum" in nature. To overcome this understanding of politics to resolve the policy paradox, we must seek solidarity under the feminist tenet, "none of us has made it until all of us has made it." Politics must be understood as okay if they are "messy." If they are messy, politics rightfully reflect real life based in real experiences. For change from the status quo to occur, politics must be seen as imaginative and creative. The general belief in common sense must be suspended to allow this to happen.

By focussing on many of the specific institutions and processes behind women and tax policy, I do not mean to lend further legitimacy to them, or to detract from some of the broader policy questions so important to feminist political activity. More important in any feminist analysis is what lies beyond the structuralist analysis, indeed much of feminist theory negates the structuralist approach.

Political Will and Governing Instruments

PACT has argued that the impact of the changed policy on the revenues of Canada would be relatively small. To illustrate their point, they use the following comparison: in 1988, single parents paid $275 million in taxes; in the same year, capital gains exemptions represented $3.6 billion. Assess as you will. In a cost-benefit analysis, the cost of remedying the tax discrimination is low enough to overcome. What is missing is political will. Given political will, any one of a number of creative options might be pursued. For instance, following divorce, child support payments might not be be taxed at all: the deductions for the payer (especially necessary for those below a certain income bracket) could continue and the taxing of child support payments in the hands of the recipient could cease all together. This could be justified as exceptional measures to address the break-up of the family and the very real poverty that often follows. (Currently, the income-splitting allowed under the inclusion/deduction system is explained as an exceptional measure addressing the disintegration of family units.) The political discourse employed to legitimize this option would entail the validation of the roles of women and the importance of children in Canadian society. Such discourse would necessarily explain that our society is only as strong as its weakest members, and that it is in our collective interest to ensure that the weakest links receive fair attention. This is only one option, and it is my preference. This option would send the message that disadvantaged women and children deserve a tax preference because our society values them. To those who, claiming their "entitlements," argue that this amounts to a tax on marriage, I reply it does no such thing: it addresses poverty among divorced women and their children; and for intact families in poverty, I would argue for other exceptional measures. As to "who picks up the tab?" I reply that when the tax costs to governments are compared, it is a sorry state of affairs if Canadians find that poor women and children cannot relinguish their tax burdens when wealthy political and economic elites, many of the latter with no sworn allegiance to any nation, let alone Canada, continue to reap tax benefits.

Barring my preferred option, one option might include the fair sharing of taxes on monies meant to support children following divorce. This would mean the removal of the deduction for parents paying child support. Court ordered child support payments would be paid in "after tax" dollars. Custodial parents would continue to pay taxes at source on monies they contribute to child care and support.

Explanatory power for the discrepancy in what is named income and who is awarded tax preferences will rest in a host of demons--threat of capital flight, abuse of social programs bankrupting the country, deficit and debt crises, or even "vindictive leech moms." Whoever the demons are, one thing is certain, political will is socially constructed by the hegemonic discourse, and political institutions are not beyond constructing reality. To do so, they use any number of governing instruments including persuasion, regulation, symbolic politics, spending, and taxation. Unlike many of the policy goals that women pursue, the objective of fair and equitable child support taxation is an attack on the governing instrument itself. Yet, like other policy areas, taxation is subject to symbolic politics, persuasion, spending, and great deal of regulation. Given the prevalent understanding of scarce resource and fiscal crises, the collection of revenues to support spending is of paramount concern for all governments. Taxation is of high priority, as is indicated by the high prestige awarded the Minister of the Department of Finance who spearheads taxation matters. "Integrity of the tax system" is the first and foremost goal of Revenue Canada, the regulating body of taxation, and it is an objective they take very seriously.

The paying of taxes is anything but voluntary. The whole process is surrounded by legally enforced, government applied regulations. I can think of no other policy area in which governments assume such a hardline application of existing rules and regulations. The rules are clear, strict, and enforced to the letter of the law. Income, despite not being defined precisely in the Act, is easily quantifiable and measureable. Unlike many policy fields, there is little room for discretion in the tax policy field.

The entire tax policy field is fraught with persuasion by *negative* inducements (penalties, interest, and jail terms). Too, random audits, in addition to their monitoring function, are used as negative inducements for the Canadian taxpayer to keep "his or her nose clean." Our compliance is ritualized in the filing of tax returns every spring. At this time taxpayers have liberal access to Revenue Canada for consultative purposes, but the information flows one way -- government to taxpayer. Despite Revenue Canada's assertion that "Canada has one of the highest levels of compliance of any country using the self-assessment system of taxation,"[261] non-compliance remains a problem. Non-compliance relates to legitimacy and every text or journal about the tax system assesses the problem of "tax avoidance."

Persuasion has been used in another way as well. Many have written about the "management" of the understanding of taxes. The current discourse, not limited to Canada, is to blame "special interests" (everyone who calls for their fair share of the pie using a "rights" argument) for the increased cost of programmes. This, in the end, has served to produce the perception of a "tax squeeze" on white (generally male) working/middle classes. Following social production of meaning and Haussman's "universe of political discourse," the current social, economic and political climates find the hybrids of neo-conservatism and neo-liberalism forcing the redistribution of income (via taxes) from the bottom to the top, which subsequently pits the disadvantaged (for example, poor whites, poor blacks, homosexuals, women, students, prisoners, or disabled) against one another.[262] Indeed, the economic recession in Canada, wherein the middle class feels squeezed by taxes, has had as its by-product less tolerance for group rights and expectations. But causality is hard to determine conclusively. Despite "socially constructed" intolerance and scapegoating, another aspect of the political discourse in Canada which may contribute to a victory for women in the taxation policy field is the fact that--if public opinion accounts for anything--Revenue Canada is the the federal department that nearly every Canadian loves to hate. In the United States, a specific hatred for taxation departments is snowballing along with a general distaste for governments.

Historically and contemporarily, governments have offered tax incentives, tax holidays, tax credits, tax rebates, tax shelters, tax concessions, tax exemptions, tax refunds and tax deductions to produce either substantive tax benefits or symbolic tax illusions. That some groups have bent the ears of government and won favour, or that the government has thought it politically advantageous to pursue certain tax preferences, is evident in the titles given these credits. As examples of substantive benefits, there are investment tax credits and scientific research tax credits; and as example of symbolic tax illusions, there are age tax credits and child tax credits.

Justification for symbolic politics has long been understood by those who formulate tax policy. When one considers the discourse surrounding tax policy which claims very clearly to be concerned with equity and fairness, one would think that the equitable treatment of women would follow. Yet, one of my texts on taxation (under the heading of "Criteria for Identifying Equals") cites the words of Adam Smith: " the certainty of what each individual ought to pay is, in taxation, a matter of so great importance, that a very considerable degree of inequality . . . is not so great an evil as a very small degree of uncertainty."[263] Certainly in Minister Rock's and Minister Martin's reactions to the Thibaudeau case, their understandings of the importance of certainty and stability seem to follow that of Adam Smith. It is a wonder that there is not a large degree of embarrassment in making speeches about the fairness and equity of the tax system.

In taxation policy, policy may change by way of legislation or jurisprudence. Often when women make gains at the policy formulation stage, their gains turn out to be symbolic when they are lost at the implementation stage. Given the rigid regulatory body of implementation, a policy objective like the fair sharing of child support taxes between mother and father would not be a problem to implement. However, this rigid implementation is a double-edged sword. Women who seek policy change are struggling against an inflexible, change resistant bureaucracy which does not lend itself to the consideration of unequal starting points. A feminist infiltration of the bureaucratic administration of implementation would make little difference in tax policy. On the other hand, litigation does raise the awareness of not only the public, but of lawyers who will incorporate the tax burden into the requests for child support and of judges who interpret and make the awards. In the three years since Thibaudeau went to court, many more lawyers are arguing for consideration of the tax burden in their cases for child support. Too, a few more judges have stated that they have considered the burden in their decision, but these instances are still few and far between. Nevertheless, feminists must be poised to analyse the proposed guidelines for setting child support awards as they unfold from the office of the Minister of Justice. Guidelines are a step toward rigid codification.

Prescriptions:

Given my feminist bias, what can I conclude about women and policy? First of all, there is the larger context to consider. The problem is much bigger than the *Thibaudeau* tax case that I have presented. In fact, the problem is bigger than tax policy discrimination itself. Equality, itself, is a concept of the very grand philosophical type with centuries--nay, millennia-- of debate behind it. Our Canadian liberal concept of equality under the neo-conservative regime of late leans toward equality among equals. This is problematic for feminists who do not want the "identical" treatment of horizontal equity. Discrimination is systemic and demands treatment based on vertical equity.

Second, any explanations of context will hinge on the perceptions and interpretations constructed by the hegemonic discourse. Government instruments are manipulated to achieve desired objectives. In some cases laws stay the same, but the justifications for them change. Violations against, and conflict surrounding, statutes, acts, and constitutional guarantees are politically managed.

Third, the budget process seems impenetrable. If women were numerous enough in the powerhouses of Canada to influence policy, the problem of equality might have already been solved. Currently, in these tough economic times wherein governments are desparate for economic growth and stability, business has captured tax policy. Tax "experts" are extremely sensitive to Canada/United States comparisons.[264] Threat of capital flight is a constant concern for governments[265] to which they respond with tax incentives. Roger Smith, a business professor at the University of Alberta, expressed concern about the "brain drain" that might result from a tax situation whereby Canadian middle-, upper-middle-, and high income taxpayers (especially married taxpayers, he adds) are squeezed any more.[266] Deductions are offered to estranged husbands as incentives in much the same way that incentives are offered to business--under threat of recoil.

Long range plans must be made to move more women into the field of economics. Science has successfully courted women to enter that "nontraditional" area of study with some stunning results. Science, however, has less of an influence now than it did previously, with expert opinions now sought from the field of economics. For immediate study in this area, feminists must explore time as an economic factor since the child support guidelines proposed by the justice committee of 1994 do not accord value to the time or any other considerations except money in the proportioning of child support obligations between parents.

Fifth, political parties have in the past fragmented women's interests, yet on the issue of the taxation of child support, alliances have been built. In the past, one expected only opposition members to fight for the underdog. In this case we see a member of the Liberal government present the case before the House. The degree of controversy surrounding the reform may play a role; if the policy in question is controversial, even the opposition party will not want to parade with it.

In the House of Commons, the critical mass of fifteen percent has been reached. In many provinces (and at the municipal level), it has been exceeded. The women feminists promote must have a feminist consciousness, since it is not enough to send women with imprisoned minds to speak for us. Further, women must attain the positions of power within the House. But change does not occur quickly. A critical mass of women in legislative assemblies, while questionable at Bystydzienski's threshold of fifteen percent, is a noble goal and should be pursued and exceeded as a matter of course.

Although tax policy seems to be focussed at the federal level, it would be wise for women to monitor provincial activites as well. Provincial governments pressure for remedies to their maintenance enforcement problems. First Ministers' conferences should be monitored for clues as to driving forces. American tax reform ought to be monitored, because tax "experts" evaluate various American models for their philosophical, legal, economic, and practical implications. Is there a feminist economic organization to which these tasks can fall?

Sixth, of women's organizations, those affiliated with government have been remarkable, but alas, they have come to an end in Ottawa, and in the province of Alberta. The great value of the large women's bureaucratic arm of the federal government can be found in their function of bringing the issues before women and the public. Their value as advisors to those who hold power has been questionable, except insofar as those who hold power may have had their consciousness raised. It has not been raised enough to date to change the law; in fact, of the many CACSW recommendations about taxation presented to government in 1977, I found seven recommendations regarding the tax deductability of alimony/maintenance payments still being played out in the courts sixteen years later. For numerous reasons, smaller bureaucratic arms of government have not been able to perform in women's interests, as we saw in the case of the Alberta Advisory Council on Women's Issues. Grassroots organizations are beneficial to the cause of women's equality because of their passion and willingness to engage in unconventional politics. Given the reinforcing tendencies of institutions, the arena of unconventional activity is where women can be their most creative. "[W]omen's efforts to date have been largely defensive and ad-hoc. That they have achieved so much in such circumstances is praiseworthy."[267] However, should the women of People Against Chilc support Taxation win their policy goal, this does not mean the end of all the problems relating to being a single custodial parent.

Seventh, the 1982 Charter of Rights and Freedoms has introduced a new dimension to the pursuit of gender equality in Canada through Section 28, and more specifically, the litigated clause, Section 15. Litigation is problematic for single parents because of the time, energy and expense for the very people who have little of these resources. However, if the resources are forthcoming, litigation does much to raise awareness across the country. Where legal costs are a concern, LEAF's involvement must be applauded and supported. Class action suits, which indicate solidarity in collective action, have credibility and success in Quebec but not elsewhere in Canada yet.

Courts predisposed to handle precise legalities are not inclined to question larger societal values. In this sense, they are legal courts, and they are likely to uphold the status quo. For justice to have a chance against legalities, courts must take the larger context into consideration. With women sensitive to women's experience and feminist values on the bench, we are already seeing decisions reflect this--witness the dissenting opinions of the *Symes* case. In close decisions or in controversial matters, the comments of dissenting judges are nearly as important as the legal decision itself as they pave the way for future reform. Feminists must continue to fight for feminist studies in law schools, they must move to fill the courts with feminist lawyers and judges. "Justice will require change, not reflection-- a new jurisprudence, a new relation between life and law."[268] In the meantime, feminists must monitor appointments to the Supreme Court Of Canada.

Despite their dismal record in protecting women against discriminatory treatment, the courts must remain a focus of feminists. Catharine MacKinnon has many good thoughts on the judicial system as it stands now, and on the possibility of change. Although MacKinnon is referring to rape when she speaks these words, she is really speaking to the denial of a woman's experiential reality, as the courts have denied the experiential reality of custodial parents. "From whose standpoint, and in whose interest, is a law that allows one person's conditioned unconsciousness to contraindicate another's experienced violation."[269] MacKinnon wonders why we collude with a judicial system that concludes that if it is not provable in a court of law, an injustice has not occurred.[270] The court decides if Thibaudeau has suffered from discrimination--discounting Thibaudeau's experience. Nevertheless, cases brought before the courts often attract attention and by that our collective consciousness is raised.

The strategy of litigation must be carefully theorized, and one can rest assured that LEAF is theorizing it. For instance, should the potential impact for the greatest number be the motivating force? Should the focus centre on the worst offenses against justice? Or would the best strategy be for women to present precedent-setting cases (such as in the case of surrogacy)?

Eighth, women must theorize a comprehensive tax plan. The pursuit of single-issue tax remedies leads us into places we do not want to be. This will not be an easy task. Women need protection in the family unit and outside of it. Women need consideration in the workplace and outside of it. A comprehensive plan could produce prescriptions which might not seem to be related to taxes, for instance, universal allowances such as a guaranteed annual income.

Ninth, with the demise of the Canadian Advisory Council on the Status of Women, women have lost an important information networking system. If Status of Women Canada is uninterested in the distribution function, women have cause for concern. With the boom in computer sales, information networking should be considered via the Internet. Articles in popular magazines reach the masses, particularly those who may be affected by issues such as the taxation of child support, and feminists should use this medium to their advantage. *Chatelaine*, a women's magazine sometimes counted on to present current feminist issues, does not always meet the mark. For example, in an eleven page section about women and the law, the part about the dissolution of marriages failed to mention the taxation of child support even once. It was more concerned with the enforcement aspect of child support instead.[271] Nevertheless, *Chatelaine* and similar magazines cannot be discounted.

Information has been sadly lacking in divorce guides for lay persons as well. In the *Divorce Guide for Alberta: Step by Step Guide to Obtaining your own Divorce*, author Gary Dickson spent six paragraphs talking about the deduction of child support and only one sentence addressing the inclusion of support as income.[272] Dickson did state that "[i]n any contested custody hearing before the court, the judge is concerned with one matter only, and that is the welfare of the children."[273] One wonders instead if it is the non-custodial parent, overwhelmingly the father, who is at heart.

Tenth, it is uncertain what can be deduced from international comparative analysis, except to look for hopeful options and evidence that discredits our Canadian experience. Feminists should examine the possibilities of an appeal to the United Nations. In addition to Article 1 presented at the outset of my paper, the Convention on the Elimination of all Forms of Discrimination Against Women ratified Article 16.1, which reads:

> State Parties . . . shall ensure, on the basis of equality of men and women:
>
> (d) *the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children* ; and
>
> *in all cases the interests of the children shall be paramount.*[274]

Lastly, I can not leave you without an alternative ideological model to consider for feminist and human rights issues. The time is right for the rise of a counter-hegemonic grassroots force. If legitimacy for Canadian politicians and institutions continues to wane, counter-hegemonic forces, even including totalitarian forces, could take advantage of the window of opportunity presented. Since the Canadian public has withdrawn any public prestige and confidence social democracy may have held, it is unlikely that the disorganized leftist forces within Canada can seize enough credence, support, hegemony, or legitimacy in the immediate future to lead the onslaught. This is especially so because the "socialist" forces (specifically Trudeau's Liberals) are largely perceived at this time as the forces that moved Canadians into the current economic crisis. A return to the long ago hegemonic discourses have concentrated and condensed in their ideologies words that instantly and habitually produce negative responses, words like "communism," "socialism," and "better dead than red." The amount of social production necessary to overcome these words to bring about acceptance of the leftist project again in Canada could be insurmountable.

Political life is full of policy paradoxes, but stalemate is the place at which first-world countries have arrived. Policy paradoxes in North America indicate nations overwhelmed by the worst elements of capitalist economic systems and liberal democracies. How might a counter-hegemonic discourse be introduced into the political equations? How do we retain the discourse of equality, justice, voice, and democracy (given our understanding that nothing short of revolution or totalitarianism or economic disaster could ever take such rights away from first world people again)? The answer lies in an alternative ideology and counter-hegemonic diligence against the world economic forces.

Begin with the term liberal democracy and focus on the *democracy* part rather than the *liberal* part as North Americans have in the past. Chantal Mouffe, in an article, "Hegemony and New Political Subjects: Toward a New Concept of Democracy," argues for a radical, libertarian, and plural democracy. She argues that liberal democracy has given us the language of equality and justice, therefore, we should not give up on liberal democracy entirely but rather we should build upon the best of the tradition:.

> A new conception of democracy . . . requires that we transcend a certain individualistic conception of rights and that we elaborate a central notion of *solidarity*. This can only be achieved if the rights of certain subjects are not defended to the detriment of the rights of other subjects. Now it is obvious that, in many cases, the rights of some entail the subordination of the rights of others. The defense of acquired rights is therefore a serious obstacle to the establishment of true equality for all. It is precisely here that one sees the line of demarcation separating the Left's articulation of the resistances of the new social movements from the utilization of these same by the New Right. Whereas the Left's program seeks to set up a system of equivalences among the greatest number of democratic demands and thus strives to reduce all inequalities, the Right's solution, as a form of populism, satisfies the needs of certain groups by creating new inequalities. This is why the politics of the latter, instead of extending democracy, necessarily widens an already deep social split between the privileged and the nonprivileged.[275]

Mouffe's prescription guarantees citizens their democratic rights yet takes them beyond the paralyzing rights discourse; her prescription reintroduces the conservative notion of the public good; her "solidarity" argument injects an element of a collective will without the threat of the "distasteful" socialism.

Drawing on Gramsci, Mouffe talks of two ways that general demands can be articulated:

> One is through neutralization: you take account of the demand of some group, not to transform society so as to resolve the antagonism it expresses, but only so as to impede the extension of that demand. That is what the New Right is doing when it takes account of some of the resistances against the hegemonic system. It tries to neutralize demands by creating antagonisms that prevent the creation of a chain of equivalence between various democratic demands.[276]

She continues:

> The opposite way demands are articulated is in what Gramsci called the "expansive hegemony." Rather than neutralize demands, an expansive hegemony links them with all other democratic struggles to establish a chain of equivalence. Of course, the wider the chain of equivalence, the wider the democratization of society, and the wider the collective will to be built on that basis.[277]

Mouffe's prescription fits the historical experience of Canadians and the commonly held understanding of Canadian ideologies. Mouffe's prescription could help to rectify policy paradoxes wherein social justice issues are at heart, policies like the taxation of child support. Policy paradoxes are inherent in polarized ideologies especially when one adds a socially produced understanding of finite resources. The notion of solidarity sends the message that "none of us has made it until all of us have made it" by, first, acknowledging, and, then, linking the political struggles that truly reflect the various concerns of all feminists and other marginalized groups. Radical, plural democracy with a commitment to solidarity could take Canadians beyond their policy paradoxes.

AFTERWORD

On May 25, 1995, the Supreme Court delivered very disappointing news indeed for Suzanne Thibaudeau when it overturned the Federal Court of Canada's earlier favourable decision regarding the taxation of the child support Mme. Thibaudeau receives for her children. In a 5-2 decision--split along gender lines --the court upheld the constitutionality of the inclusion/deduction system within the *Income Tax Act*. The majority decision written by Justice Charles Gonthier concurred with some previously argued justifications wherein income splitting is understood to maximize the available resources for the children following the dissolution of the two parent traditional family. In addition, the majority decision indicates that utilitarian views of "the greatest good for the greatest numbers" prevail when Justice Gonthier disagreed with Judge Hugesson's enlightened understanding of discrimination that had discrimination not depending on proof that most or even large numbers of a group were suffering adverse affects: for Hugesson, it is enough that "some women, no matter how small the group . . . ." were adversely affected. Gonthier, on the other hand, demands that ". . . legislation must be assessed in terms of the majority of cases to which it applies."[278]

In the dissenting opinion, Madam Justice Beverly McLachlin argued that when thirty percent of the families are adversely affected, the law is unacceptable. Among several other arguments, McLachlin took issue with Gonthier's decision that has a *fractured* family as a tax-paying unit, especially in the *Thibaudeau* case which cited Section 15 of the Charter of Rights and Freedoms which begins: "Every individual . . . ."

On national television immediately after the decision, Thibaudeau did not withhold her exasperation as she explained that "the laws . . . made by men, for men" keep the women and children of Canada in poverty. Her emotive responses extended to include shame to live in Canada. In a long legal battle, Thibaudeau's experience, and the very real experiences of other custodial parents, was explained away by the court. Across the nation, single mothers--and feminists in solidarity--feel frustration and anger similar to Thibaudeau's emotions. Many single parents face fear and despair as the implications of this decision set in. My heart sunk as I read in the *Edmonton Journal* on the day following the decision that an acquaintance with whom I was involved in Parents Against Child-support Taxation now owes Revenue Canada $44,000.

Be that as it may, the Supreme Court decision has thrust the issue of the taxation of child support back into the political arena where, as I have presented earlier, there is the force of a commitment to tax reform publicly stated by individual Members of Parliament, a recent government commission, and the two appropriate Ministers of the current government. If Canada's collective consciousness breaks free from its imprisioned thinking, and if the experiential realities of women find credence as "ways of knowing," the best interests of women, and especially of children, will be met with positive substantive tax reform. More likely, that which is politically expedient will be done since history shows us that symbolic political management is the usual course of action. Nevertheless, and to end on a more optimistic note, the issue of the taxation of child support has been pushed, shoved, tossed like a hot potato, and now dumped by the Supreme Court onto the political agenda. The issue is not likely to go away until some fairness, or at least the perception of it, has been extracted from the tax system and counted as a success.

Endnotes

[1] These words attributed to E.J. Benson, Minister of Finance, were spoken in 1971 (Gardner, Robert. "Tax Reform and Class Interests: The Fate of Progressive Reform, 1967-1972," *Canadian Taxation.* Winter, 1981. p. 256.), and again in 1994 by Paul Martin, our current Minister of Finance (CBC Radio, Friday, March 11, 1994). Having been a speech writer for a government department, I know first hand that parts of speeches are recycled, and key phrases, especially important for communications sections within departments, facilitate the social production of meaning. I bring this to your attention to indicate how--in repetition--hollowness of meaning replaces grand philosophical intention.

[2] Sandra Harding. "Introduction: Is There a Feminist Method?" in *Feminism and Methodology.* Sandra Harding ed., Bloomington, Indiana: Indiana University Press, 1987, p12.

[3] Section 56 (1)(b) and (c) reads:

> (b) Alimony. – any amount received by the taxpayer in the year, pursuant to a decree, order or judgement of a competent tribunal or pursuant to a written agreement, as alimony or other allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if the recipient was living apart from, and was separated pursuant to a divorce, judicial separation or written separation agreement from, the spouse or former spouse required to make the payment at the time the payment was received and throughout the remainder of the the year;
>
> (c) Maintenance. – any amount received by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the taxpayer, children of the taxpayer, or both the taxpayer and children of the taxpayer if, at the time the payment was received and throughout the remainder of the year, the taxpayer was living apart from his spouse who was required to make the payment; . . . .

[4] Section 60 reads: There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable:

> (b) an amount paid by the taxpayer in the year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, as alimony or other allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if he was living apart from, and was separated pursuant to a divorce, judicial separation or written separation agreement from, his spouse or former spouse to whom he was required to make the payment at the time the payment was made and throughout the remainder of the year;
>
> (c) an amount paid by the taxpayer in the year, pursuant to an order of a

> competent tribunal, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the recipient, or both the recipient and children of the recipient if, at the time the payment was made and throughout the remainder of the year, he was living apart from his spouse to whom he was required to make the payment.

[5] Catharine A. MacKinnon. "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence" in *Feminism and Methodology.* Bloomington, Indiana: Indiana University Press, 1987, p.137.

[6] Claus Offe. "Challenging the Boundaries of Institutional Politics: Social Movements since the 1960s," in *Changing Boundaries of the Political: Essays on the Evolving Balance Between the State and Society, Public and Private in Europe.* Charles Maier ed., Cambridge, England: Cambridge University Press, 1987, p. 66.

[7] Roger Gibbins. *Conflict and Unity: An Introduction to Canadian Political Life.* Toronto: Methuen Publications, 1985, p. 2.

[8] I must credit Dr. Gurston Dacks, political science professor at the University of Alberta, for this term. He always coached us as students to be creative in our approach to politics.

[9] Deborah A. Stone. *Policy Paradox and Political Reason.* New Hampshire: Harper Collins Publishers, 1988, p. 1.

[10] Richard J. Van Loon and Michael S. Whittington. *The Canadian Political System: Environment, Structure and Process.* fourth edition. Toronto: McGraw Ryerson Ltd., 1987.

[11] Antonio Gramsci. *Selections from the Prison Notebooks.* New York: International Publishers, 1992 (1971), p. 12.

[12] Heather Jon Maroney. "Using Gramsci for Women: Feminism and the Quebec State, 1960-1980," *Resources for Feminist Research.* Vol. 17, no. 3, p. 26.

[13] *Ibid.,* p. 27.

[14] *Ibid.,* p. 26.

[15] This term is used as it is in Robert A. Dahl's *Modern Political Analysis.* Fourth edition. Engelwood Cliffs, New Jersey: Prentice-Hall Inc., 1984 (1963).

[16] Stone. *Policy Paradox.* . . . p. 47.

[17] *Ibid.,* p. 9.

[18] Charles E. Lindblom "The Market as Prison," in T. Ferguson and J. Rogers (eds.) *The Political Economy: Readings in the Politics and Economics of American Public Policy.* Armonk, New York: M.E. Sharpe Inc., 1984.

[19] Stone. *Policy Paradox* . . . . p. 6.

[20]"A Manifesto for Cyborgs: Science, Technology, and Socialist Feminism in the 1980s," in L. Nicholson, ed. *Feminism/Postmodernism.*

[21] In April of 1995, Alberta Tory Member of the Legislative Assembly, Julius Yankowsky, spoke against a bill to place restrictions on parents of children who fail to provide child support to their estranged children. In this speech, he made reference to custodial parents as "vindictive leech moms."

[22] Offe. "Challenging the Boundaries. . . . " p. 65.

[23] *Ibid.,* p. 65.

[24] Don Carmichael, Tom Pocklington, and Greg Pyrcz. *Democracy and Rights in Canada* . Toronto: Harcourt Brace Jovanovich, Canada. 1991, p. 13.

[25] Offe. "Challenging the Boundaries. . . . " p. 66.

[26] qtd. in Carmichael *et al. Democracy and Rights in Canada.* p.15.

[27] Carmichael *et al.* p. 5.

[28] *Ibid.*, p. 16.

[29] "Public choice can be defined as the economic study of nonmarket decision-making, or simply the application of economics to political science," according to Dennis Mueller cited in Kenneth Kernaghan's and David Siegel's *Public Administration in Canada: A Text.* Scarborough, Ontario: Methuen Publications, 1989. p. 111.

[30] Charles E. Lindblom. "The Science of 'Muddling Through'" in *Public Administration Review* (Spring 1959), p. 569.

[31] John Kingdon. *Agendas, Alternatives, and Public Policies.* Michigan: Harper Collins Publishers, 1984. p. 218.

[32] Virginia Sapiro. "When are Interests Interesting?" in *American Political Science Review* 75:3 (September 1981) p. 705.

[33] One political commentator suggested that the Right in the United States may have recently "overextended themselves." This comment came following a bombing of the government building in Oklahoma City which killed over a hundred people including many children in a daycare centre. The bombing occurred at a time when the Republicans are sympathetic to the cause of the National Rifle Association who are criticizing gun and ammunition control in the United States.

[34] I first encountered this term in Charles E. Lindblom's "The Market as Prison." There he discusses how our thinking accepts the market model so much so that our thinking does not include alternative understandings any longer, thus our thinking is imprisoned.

[35] Lorraine Code. "Feminist Theory" in *Changing Patterns: Women in Canada.* Toronto: McClelland and Stewart Inc., 1988. p. 21.

[36] *Ibid.*, p. 40.

[37] MacKinnon. "Feminism, Marxism, Method, and the State:. . . ." p. 136.

[38] The business perspective of which I speak caters to mid-sized to large corporations national or multi-national in nature. On the other hand, small business, partly because of its community base, remains very much connected at the micro-level and aligned with the customer and his/her needs, the employee, and the product.

[39] Bertrand Marotte. "Even Business Leaders Question Billions in Handouts," *The Edmonton Journal*, September 10, 1993, p. A4.

[40] Women constitute fifty-two percent of the population and ". . . most women espouse some type of feminist values" according to the 1986 conclusions of a study done by Jill Vickers, professor at Carlton University in Ottawa. Cited in Melissa A. Haussman. "The Personal is Constitutional: Feminist Struggles for Equality Rights in the United States and Canada" in *Women Transforming Politics: Worldwide Strategies for Empowerment.* ed. Jill M. Bystydzienski, Bloomington: Indiana University Press, 1992. p. 111.

[41] MacKinnon. "Feminism, Marxism, Method, and the State:. . . ." p. 139.

[42] Code. "Feminist Theory" p. 20.

[43] MacKinnon. "Feminism, Marxism, Method, and the State:. . . ." p. 136.

[44] Harding. "Introduction: Is There a Feminist Method?" p. 1.

[45] *Ibid.*, p. vii.

[46] *Ibid.*, p. 6.

[47] *Ibid.*, p. 7.

[48] Tom Arnold. "City Man Denied Federal Child-Tax Benefit: Dad who has Sole Custody of Two Kids Rejected Because He's Male," in *The Edmonton Journal,* January 28, 1994, p. B3.

[49] Harding, "Introduction: Is There a Feminist Method?" p. 1.

[50] Joan Kelly-Gadol, Joan. "The Social Relations of the Sexes: Methodological Implications of Women's History" in *Feminism and Methodology.* Bloomington, Indiana: Indiana University Press. 1987, p. 17.

[51] MacKinnon. "Feminism, Marxism, Method, and the State:. . . ." p.136.

[52] Susan A. McDaniel. "The Changing Canadian Family" in *Changing Patterns: Women in Canada.* Toronto: McClelland and Stewart Inc., 1988. p. 124.

[53] Harding, "Introduction: Is There a Feminist Method?" pp. 9-10.

[54] *Ibid.*, p. 9.

[55] Dorothy E. Smith. "Women's Perspective as a Radical Critique of Sociology" in *Feminism and Methodology.* Bloomington, Indiana: Indiana University Press, 1987. p. 93.

[56] *Ibid.*, p. 95.

[57] Harding, "Introduction: Is There a Feminist Method?" p.10.

[58] Smith. "Women's Perspective . . . ." p. 86.

[59] *Ibid.*, p. 85.

[60] MacKinnon. "Feminism, Marxism, Method, and the State:. . . ." p.140.

[61] Smith. "Women's Perspective . . . ." p. 91.

[62] Code. "Feminist Theory" pp. 19-20.

[63] Joyce Gelb and Marian Lief Palley, *Women and Public Policies.* revised edition, Princeton University Press, 1987. p. 198.

[64] Code citing Beverley Baines in Code's "Feminist Theory", p. 22.

[65] *Ibid.*, p. 35.

[66] *Ibid.*, p. 46.

[67] *Ibid.*, p. 46.

[68] Canada ratified the Convention's resolutions in December of 1981.

[69] Ian Hunter cited in *Convention on the Elimination of all Forms of Discrimination Against Women : Report of Canada* Ottawa: Department of the Secretary of State. May 1983. p. 1. (citation for Hunter's work: "The Origin, Development and Interpretation of Human Rights Legislation" in *The Practice of Freedom* ed R. J. MacDonald and John P. Humphry, Toronto: Butterworths, 1979, p. 84.)

[70] Canadian Advisory Council on the Status of Women. (CACSW) *Canadian*

Charter Equality Rights for Women: One Step Forward or Two Steps Back? 1989. p. 11.

[71] Beverley Baines. "Women and the Law" in *Changing Patterns: Women in Canada.* Toronto: McClelland and Stewart Inc., 1988. p. 157.

[72] *Ibid.*, p. 158.

[73] *Ibid.*, p. 158.

[74] *Ibid.*, p. 158.

[75] *Ibid.*, p. 173.

[76] *Ibid.*, p. 174.

[77] *Ibid.*, p. 174.

[78] *Ibid.*, p. 182.

[79] MacKinnon. "Feminism, Marxism, Method, and the State: . . . ." p. 147.

[80] Baines. "Women and the Law" p. 174.

[81] Harding, "Introduction: Is There a Feminist Method?" p. 4.

[82] Smith. "Women's Perspective . . . ." p. 91. Smith does not use the political science example as I have interjected here. Rather, she uses the example of sociology, and the reader is invited to apply Smith's assertions to other fields of study.

[83] *Ibid.*, p. 91.

[84] Vern Krishna. *The Fundamentals of Canadian Income Tax: An Introduction.* Revised second edition, Toronto: Carswell. 1988. p. 1.3.

[85] *Canadian Tax Journal.* vol 34. no 5. (September/October, 1986) p.1047.

[86] *Convention on the Elimination of all Forms of Discrimination Against Women : Report of Canada* . p. 241.

[87] *Ibid.*, p. 241.

[88] Peter C. Newman. "The Revolutionary Bomb in the Budget," in *Maclean's*, vol. 107, No.6, Feb. 7, 1994. p. 54.

[89] *Ibid.*, p. 54.

[90] Irving Jay Goffman. *Erosion of the Personal Income Tax Base in Canada and the United States.* Doctoral thesis presented to the Graduate School of Arts and Sciences: Duke University, 1959. p. 12.

[91] Vladimir Salyzyn. *Canadian Income Tax Policy: An Economic Evaluation.* Fourth edition. Don Mills, Ontario: CCH Canadian Limited: Tax and Business law Publishers. 1990, p. 16.

[92] *Report of the Royal Commission on the Economic Union and Development Prospects for Canada.* Volume Two. Minister of Supply and Services Canada, 1985. p. 206.

[93] Salyzyn. *Canadian Income Tax Policy: An Economic Evaluation.* p. 61.

[94] "Family Trusts" in Report on Your Money, in *The Globe and Mail*, March 4, 1995, p. B20.

[95] *Ibid.*, p. B20.

[96] "Taxplanner" section of *The Edmonton Journal*, November 8, 1993, p. D2.

[97] "Paul Martin's Juggling Act" in "Insight" section of *The Edmonton Journal*, February 25, 1995, p. C2.

[98] Susan A. McDaniel, "The Changing Canadian Family" in *Changing Patterns: Women in Canada*. Toronto: McClelland and Stewart Inc., 1988, p. 125.

[99] Rosemary Speirs."Tax Breaks Just Too Rich," in *The Edmonton Journal.* February 20, 1995 p. A8.

[100] CBC Radio, October 4, 1994. This figure of 330 million dollars pertains to the year 1991 rather than 1994. Three hundred and thirty million dollars was the figure released by the government to the media and the public when the Thibaudeau case first started to enjoy publicity. It continues to be the figure most often cited by the media today, even though the most current figure (1994), according to Revenue Canada, is $334 million. It should be noted that these figures represent all "alimony" (which by definition in the *Income Tax Act* includes spousal and child support) since spousal and child support are not distinquished from each other when reported on income tax returns. Revenue Canada currently operates on the assumption that eighty-five percent of all alimony is child support.

[101] *Canadian Tax Reports* 1046--3-92: p. 3121.

[102] *Ibid.* 1046--3-92: p. 3028.

[103] Canadian Advisory Council on the Status of Women.(CACSW) *Women and Income Tax Reform*. 1987. p. 22.

[104] CACSW*Canadian Charter Equality Rights for Women: One Step Forward or Two Steps Back?* 1989. p. 11.

[105] James R. Bain. "There are Rules when Income Splitting," in *The Wetaskiwin Times*. Wetaskiwin, Alberta: Jan 31, 1994, p. B28.

[106] CACSW. *Women and Income Tax Reform*. p. 23.

[107] CACSW *Annotated Recommendations on Women and Taxation* . Ottawa 1978. p. 10.

[108] Louise Dulude. "Tax and Family Laws: A Search for Consistency" in *Family Law in Canada: New Directions*. ed. Elizabeth Sloss. Canadian Advisory Council on the Status of Women. Ottawa. 1985. p. 77.

[109] *Ibid.*, p. 77.

[110] Robert Gardner. "Tax Reform and Class Interests: The Fate of Progressive Reform, 1967-72" in *Canadian Taxation.* Winter, 1981. p. 256.

[111] *Ibid.*, p. 256.

[112] Salyzyn. *Canadian Income Tax Policy: . . . .* p. 140.

[113] Dulude. "Tax and Family Laws: . . . ." p. 63.

[114] Dulude. "Tax and Family Laws . . . . p. 64.

[115] *Ibid.*, p. 65.

[116] *Ibid.*, pp. 64-65.

[117] CACSW. *Women and Income . . . .* p. 5.

[118] *Ibid.*, p. 9.

[119] Dulude. "Tax and Family Laws . . . . p. 66.

[120] Ministry of Finance -cited in Salyzyn. p. 138.

[121] CACSW. *Women and Income . . . .* p. 24.

[122] Auditor General report in *CTJ* . Vol 34 no 6. p. 1512.

123 CACSW. *Women and Income . . . .* p. 25.

124 *Ibid.,* p. 31.

125 Salyzyn. p. 45.

126 *Canadian Tax Journal (CTJ.)* September/October 1986, p. 993.

127 Leo Panitch. "The Role and Nature of the Canadian State," in *The Canadian State: Political Economy and Political Power.* ed. L. Panitch. Publisher unknown, pp. 3-27.

128 *Canadian Tax Reports* 1043-3-92, p. 35,025.

129 *CTJ.* September/October 1986, p. 993.

130 David Stockman qtd. in Greider, William. "The Education of David Stockman," in *Atlantic Monthly.* December 1981. p. 30.

131 Joseph White and Aaron Wildavsky. "Public Authority and the Public Interest," in *Journal of Theoretical Politics.* (January 1989). paragraph 1.

132 *Ibid.,* p. 13.

133 *Ibid.,* p. 13.

134 *Ibid.,* p. 19.

135 Stone. *Policy Paradox . . . .* p. vii.

136 Douglas Hartle.. *The Expenditure Budget Process of The Government of Canada: A Public Choice– Rent-Seeking Perspective.* Toronto: Canadian Tax Foundation, 1988.

137 Salyzyn. p. 31.

138 *Ibid.,* p. 32.

139 Gardner. "Tax Reform and . . . . p. 245.

140 *Ibid.,* p. 245.

141 *Ibid.,* p. 248.

142 *Ibid.,* p. 245.

143 *Ibid.,* p. 252.

144 *Ibid.,* p. 247.

145 *Ibid.,* p. 254.

146 *Ibid.,* p. 256.

147 *Ibid.,* p. 257.

148 *Ibid.,* p. 257.

149 Salyzyn. p. 38.

150 *Ibid.,* p. 44.

151 *Ibid.,* p. 44.

152 "Over 2.5 million Canadians voted for Reform candidates. They captured 19% of the popular vote nationally [26% outside of Quebec, 20% in Ontario, 22% in Manitoba, 27% in Saskatchewan, 36% in B. C., and 52% in Alberta.] This resulted in electing 24 seats from B.C., 22 from Alberta, 4 from Saskatchewan, one each from Manitoba and Ontario. Reform candidates ran second in 79 federal ridings." These figures were found on the front page of the Reform Party of Canada: Wetaskiwin Constituency News, Christmas 1993.

[153] Letter to me from Liberal Member of Parliament, Anne McLellan, undated but circa June 1994.

[154] Virginia Sapiro. "When are Interests Interesting?" in *American Political Science Review* 75:3 (September 1981) p. 704.

[155] Canadian Advisory Council on the Status of Women (CACSW) *Women and Income Tax Reform.* 1987. p. 2.

[156] *Convention on the Elimination* . . . . p. 241.

[157] CACSW. *As Things Stand: Ten Years of Recommendations.* 1983. p. 101.

[158] CACSW "Social Policy and Social Welfare" in *As Things. . .* p. 88.

[159] Royal Commission on Taxation Report qtd. in Smith, Roger S. "Rates of Personal Income Tax: The Carter Commission Revisited" in *Canadian Tax Journal (CTJ),* vol 35. no 5. September/October 1987. p. 1229.

[160] James C. Richardson. "Divorce in Canada" in *Marriage and the Family in Canada Today* Second edition. ed G.N. Ramu, Scarborough, Ontario: Prentice Hall, 1989. p. 201.

[161] Support payments amount to, on average, eighteen percent of gross income of the divorced men or $250 per child. Richardson. "Divorce in . . . . p. 210.

[162] *Ibid.,* pp 201-202.

[163] CACSW. *As Things. . . .* p. 102.

[164] Richardson. "Divorce in . . . . p. 201.

[165] *Convention on the Elimination . . . .* p. 247.

[166] Code. "Feminist Theory," p. 35.

[167] Linda Trimble. "Becoming Full Citizens: Women and Politics in Canada" in Robert H. Krause and R.H. Wagenberg, *Introductory Readings in Canadian Politics and Government.* 2nd Edition. Toronto: Copp Clark, 1995. p. 278.

[168] *Ibid.,* p. 279

[169] Chantal Maille. *Primed for Power: Women in Canadian Politics.* Background Paper prepared for the Canadian Advisory Council on the Status of Women. November 1990.

[170] Speech notes regarding the debates supplied by Ms. Gaffney's office, p 1.

[171] *Ibid.,* pp. 1-3.

[172] *Ibid.,* p. 4.

[173] *Ibid.,* p. 5.

[174] *Ibid.,* p. 5.

[175] Alberta *Hansard.* April 29, 1993, p. 2483.

[176] *Ibid.,* p. 2483.

[177] Sandra Burt. "Organized Women's Groups and the State" in *Policy Communities and Public Policy in Canada: A Structural Approach.* Toronto: Copp Clark Pitman Ltd. , 1990. p. 193.

[178] *Ibid.,* p. 193.

[179] *Ibid.,* p. 195.

[180] CACSW. *Annual Report* p. 4.

[181] *Ibid.,* p.5.

[182] According to an interview with a communications officer at Status of Women.

[183] Editorial in *The Edmonton Journal.* May 18, 1993, p. A12.

[184] *Ibid.,* p. A12.

[185] The process by which the consultants collected data was via focus groups formed through adult learning centres throughout the province. In addition, the Council placed advertisements in newspapers across the province encouraging women to submit their opinions by phone or written letter directly to the Council. The report and final recommendations are expected in the Fall of 1995.

[186] Diana Coulter."Advisory Group Gathers Women's Opinions on Taxes and Child Support," in *The Edmonton Journal.* June 18, 1994, p. A7.

[187] Summarized from the Alberta Advisory Council on Women's Issues (AACWI). *Task Group on the Tax Treatment of Child Support: Discussion Points.* 1994.

[188] *Ibid.,* p. 3.

[189] Public letter- no citation.

[190] Salyzyn. p. 30.

[191] *Ibid.,* p. 48.

[192] Revenue Canada. *Inside Taxation.* 1983.

[193] Fairness at the implementation level is different from fairness at the policy-making level.

[194] "Mom Fights Tax on Child Support: Favorable Court Ruling Could Mean Refunds for 250,000 Canadians," The Canadian Press, in *The Edmonton Journal.* April 28, 1993. p. D13.

[195] Telephone interview with Marie Gordon, May 9, 1995.

[196] This discrepancy should not detract from Ms. Gordon's credibility. Ms. Gordon was simply making the point that Secretary of State funding has been greatly reduced since 1985.

[197] Other opportunities for monetary support of legal cases exist. The Ontario government set aside a one million dollar litigation fund for Ontario cases only for Charter challenges of constitutionality. The principal is retained and the interest spent to pursue cases. In addition, litigants can apply under the federal "Court Challenges Programme" to have the costs of Charter challenges covered.

[198] Revenue Canada. *Inside Taxation.*

[199] *Thibaudeau v. M.N.R.,* (1992) 2 C.T.C. 2497 at 2503.

[200] *Schaff v. M.N.R.,* (1993) 2 C.T.C. 2695, at 2700, 2703.

[201] *Thibaudeau v. M.N.R.,* (1992) 2 C.T.C. 2497, at 2504.

[202] *Ibid.,* at 2504.

[203] *Ibid.,* at 2504.

[204] *R. v. Edwards Books Art Ltd. [1986]* as cited in *Schaff v. M.N.R.,* (1993) 2 C.T.C. 2695, at 2702.

[205] *Thibaudeau v. M.N.R.,* (1992) 2 C.T.C. 2497, at 2504-2505.

[206] *Ibid.,* at 2505.

[207] *Ibid.*, at 2501.

[208] *Thibaudeau v. M.N.R.*, (1992) D.T.C. 2098. Translated from French to English.

[209] *Ibid.*, at 2098.

[210] *Schaff v. M.N.R.*, (1993) 2 C.T.C. 2695, at 2703.

[211] *Thibaudeau v. M.N.R.*, (1992) 2 C.T.C. 2497, at 2505.

[212] Compiled from *Thibaudeau v. M.N.R.*, (1992) 2 C.T.C. 2497, at 2512-2513.

[213] *Thibaudeau v. M.N.R.*, (1992) 2 C.T.C. 2497, at 2505, and *Schaff v. M.N.R.*, (1993) 2 C.T.C. 2695, at 2705.

[214] *Thibaudeau v. M.N.R.*, (1992) 2 C.T.C. 2497, at 2505.

[215] *Ibid.*, at 2505.

[216] *Ibid.*, at 2505.

[217] *Ibid.*, at 2510.

[218] *Ibid.*, at 2511.

[219] *Schaff v. M.N.R.*, (1993) 2 C.T.C. 2695, at 2696.

[220] *Ibid.*, at 2700.

[221] *Ibid.*, at 2701.

[222] *Ibid.*, at 2706.

[223] *Ibid.*, at 2706.

[224] *Ibid.*, at 2701.

[225] Editorial in *The Edmonton Journal*, August 16, 1993, p. A6.

[226] *Thibaudeau v. M.N.R.*, (1994) 2 C.T.C. 4, at 7.

[227] *Ibid.*, at 8.

[228] *Ibid.*, at 8.

[229] Judge Iacobucci. qtd. in *Thibaudeau v. M.N.R.*, (1994) 2 C.T.C. 4, at 8.

[230] *Thibaudeau v. M.N.R.*, (1994) 2 C.T.C. 4, at 9-10.

[231] *Ibid.*, at 10.

[232] *Ibid.*, at 10.

[233] *Ibid.*, at 13.

[234] *Ibid.*, at 14.

[235] *Ibid.*, at 14.

[236] *Ibid.*, at 20.

[237] *Ibid.*, at 20.

[238] " 'Someone has to Pay Taxes' on Child Support, Martin Says" in *The Edmonton Journal*, May 13, 1994. p. A3.

[239] John Goddard. "Child Support Taxes: Who Should Pay?" in Chatelaine, November, 1994. p. 64. Please refer to endnote #100 for an explanation of the discrepancy in figures.

[240] *Thibaudeau v. M.N.R.*, (1992) 2 C.T.C. 2497, at 2502. The most recent figures available from Revenue Canada are for 1992. That year's federal cost was $202

million and the provincial cost was $132 million, for a total net cost of 334 million dollars.

[241] Goddard. "Child Support Taxes: . . . . " p. 64.

[242] Goddard "Child Support Taxes: . . . . " p. 64, and " 'Someone has to pay' . . . ", in *The Edmonton Journal*, May 13, 1994, p. A3.

[243] " 'Someone has to pay' . . . ", in *The Edmonton Journal*, May 13, 1994, p. A3.

[244] Editorial in *The Edmonton Journal* May 7, 1994, p. A10

[245] *CTJ.* Vol 34 no 6., p. 1525.

[246] *Ibid.,* p. 1526. Refer to Matrimonial Causes Act 1973.

[247] James Snell and Frederick Vaughan. *The Supreme Court of Canada: History of the Institution.* Toronto: University of Toronto Press, 1985.

[248] *Ibid.,* p. 241.

[249] William Johnson. "Child Care: the Ultimate Equality Test," in *The Edmonton Journal.* December 29, 1993. p. A16.

[250] CACSW. *Women and Legal Action: Precedents, Resources and Strategies for the Future.* 1984, p. 54.

[251] *Ibid.,* p. 55.

[252] "Class Consciousness in the Courts: New Class Action Law Empowers Judges as Much as It Does Consumers," *Alberta Report*, August 30, 1993. p. 24.

[253] *Ibid.,* p. 25.

[254] CACSW. *Women and Legal Action:* . . . . p. 55.

[255] Salyzyn. p. 40.

[256] *Ibid.,* p. 40.

[257] MacKinnon. "Feminism, Marxism, Method, and the State:. . . ." p. 141.

[258] Code. "Feminist Theory." p. 19.

[259] Goddard. "Child Support Taxes: . . . . " p. 65.

[260] Code. p. 19.

[261] Revenue Canada. *Inside Taxation* . p. 33.

[262] Thomas Edsall and Mary Edsall. *Chain Reaction: the Impact of Race, Rights, and Taxation on American Politics.* New York: W.W. Norton and Company, 1992. pp. 1-5.

[263] Salyzyn. p. 25.

[264] Roger S. Smith. "Rates of Personal Income Tax: The Carter Commission Revisited" in *Canadian Tax Journal,* vol 35. no 5. September/October 1987, p. 1239.

[265] Charles Lindblom. "The Market as Prison," in T. Ferguson and J. Rogers (eds.) *The Political Economy: Readings in the Politics and Economics of American Public Policy.* Armonk, New York: M.E. Sharpe Inc., 1984.

[266] Smith. "Rates of Personal . . . ." pp.1238-1239.

[267] CACSW. *Women and Legal Action:* . . . p. 8.

[268] MacKinnon. "Feminism, Marxism, Method, and the State:. . . ." p. 149.

[269] *Ibid.,* p. 146.

[270] *Ibid.,* p. 146.

[271] "Women and the Law," *Chatelaine*. April 1994. pp. 79 - 90.

[272] Gary Dickson. *Divorce Guide For Alberta: Step-by-Step Guide to Obtaining Your Own Divorce.* Self Counsel Series. Vancouver: International Self-Counsel Press Ltd., 1986. p. 18.

[273] *Ibid.*, p. 11.

[274] *Convention on the Elimination of all Forms of Discrimination Against Women: Report of Canada* .

[275] Chantal Mouffe. "Hegemony and New Political Subjects: Toward a New Concept of Democracy," in *Marxism and the Interpretation of Culture.* Eds. Cary Nelson and Lawrence Grossberg. Urbana: University of Illinois Press, 1988. p. 99.

[276] *Ibid.*, p. 103.

[277] *Ibid.*, p. 103.

[278] Afterword comments arise from an unreported version of the final decision of the Supreme Court of Canada: *Thibaudeau v. M.N.R.*, (1994: Oct.4; 1995: May 25), File No: 24154 (S.C.C.).

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